

YEARLY LEGAL PRACTICES.

NOTE.—The Subscription List closes on September 15th in each year, after which date the works are supplied at regular prices.

Forms for ANNUAL PREPAID SUBSCRIPTIONS sent
post free on application to

BUTTERWORTH & CO., 12, Bell Yard, Temple Bar, W.C.

(1) THE YEARLY SUPREME COURT PRACTICE.

The Judicature Acts and Rules, 1873—1901, and other Statutes and Orders relating to the practice of the Supreme Court of Judicature, with the Appellate Practice of the House of Lords, with Notes by M. MUIR MACKENZIE, Esq., Benchet of the Middle Temple, Recorder of Sandwich, late Fellow of Hertford College, Oxford; SYDNEY GEORGE LUSHINGTON, M.A., B.C.L., Esq., of the Inner Temple, Barrister-at-Law; and JOHN CHARLES FOX, Esq., a Master of the Supreme Court; assisted by C. G. S. MCALESTER, Esq., B.A.; ARCHIBALD READ, Esq., B.A.; LINDSEY SMITH, Esq., and W. MUIR MACKENZIE, Esq., Barristers-at-Law; and other members of the Profession. Price 20s. net.

(2) THE YEARLY COUNTY COURT PRACTICE.

(Founded on Archbold's and Pitt-Lewis's County Court Practices.) In 2 Vols. Vol. I.—**General and Admiralty Jurisdiction**, containing the County Courts Act, 1888; The Employers' Liability Act, 1880; the Admiralty Jurisdiction Acts, 1868 and 1869, and other enactments relating to the General Jurisdiction of the County Court, together with Rules and Forms, with PRACTICAL NOTES THROUGHOUT. Vol. II.—**Special Jurisdiction**, containing the Practice under the various statutes especially conferring Jurisdiction upon County Courts. By G. PITT-LEWIS, K.C.; Sir C. ARNOLD WHITE, Chief Justice of Madras; and ARCHIBALD READ, B.A., Esq., Barrister-at-Law. Price 25s.

(3) THE YEARLY JUSTICES' PRACTICE.

Being **Stone's Justices' Manual**, 34th Ed.

Or Guide to the Ordinary Duties of a Justice of the Peace, with Table of Cases, Appendix of Forms, and Table of Punishments, by the late SAMUEL STONE, Esq. *Thirty-fourth Edition.* By J. R. ROBERTS, Esq., Clerk to the Justices of Newcastle-upon-Tyne. Price 25s.

"It has superseded all other books on Magisterial Law . . . Every reliance can be placed on it."—*The Justice of the Peace.*

"Accurate . . . Terse . . . Standard work."—*Solicitors' Journal.*

(4) THE YEARLY DIGEST OF CASES.

Being a full Analysis of **all Cases** decided in the Superior Courts, and reported in **all the Reports** together with a selection from the Scotch and Irish Reports. Price 15s.

BUTTERWORTH & Co.,

12, Bell Yard, Temple Bar, London, W.C.

589

One of the Greatest Legal Works of the Day.

In 12 vols., to be published Quarterly, at 27/6 or 30/- per vol.

Original Subscribers will be entitled to the vols. at a reduced rate.

* * *Full Prospectus on Application.*

ENCYCLOPÆDIA
OF
FORMS & PRECEDENTS

BY SOME OF

The most Eminent Conveyancing & Commercial Counsel.

UNDER THE GENERAL EDITORSHIP OF

ARTHUR UNDERHILL, Esq., M.A., LL.D.,

Of Lincoln's Inn, Barrister-at-Law.

*Reader of the Law of Real and Personal Property in the Inns of Court; and
Author of "The Law of Trusts," and "A Treatise on the Settled Land
Acts," etc.; Editor of "Fisher on Mortgage."*

With the Assistance of the following **Consulting Editors**, who have consented to give their Advice on any Points of Difficulty that may arise.

W. D. RAWLINS, Esq., K.C.,
*Author of "The Specific Performance
of Contracts, 1899."*

A. MACMORRAN, Esq., K.C.,
Editor of "Lumley's Public Health."

T. H. CARSON, Esq., K.C.,
*Editor of "Tudor's Leading Cases
on Conveyancing, etc."*

T. C. WRIGHT, Esq.,
*Of Lincoln's Inn, Barrister-at-Law;
A Joint Editor of "Davidson's Precedents
and Forms in Conveyancing."*

J. K. PECK, Esq.,
Of Lincoln's Inn, Barrister-at-Law.

J. SAVILL VAIZEY, Esq.,
Of the Middle Temple, Barrister-at-Law.

S. P. BUTLER, Esq.,
*One of the Conveyancing Counsel to
the Court.*

J. B. DYNE, Esq.,
*One of the Conveyancing Counsel to
the Court.*

W. M. FAWCETT, Esq.,
*Of Lincoln's Inn, Barrister-at-Law,
Author of "Fawcett's Landlord and
Tenant."*

W. A. COPINGER, Esq., LL.D.,
*Professor of Law in the Owens College;
Author of "An Index to Precedents
in Conveyancing," etc.*

P. S. GREGORY, Esq.,
Of Lincoln's Inn, Barrister-at-Law.

THE purpose of this Work is to supply, in a convenient and easily accessible arrangement, a complete collection of all the Forms and Precedents which are necessary to the lawyer in the practice of his profession.

Unlike existing Collections of Forms, which are mostly the work of a single author, the Forms in this Work will be written by Specialists in their respective branches, but harmony and consistency will be secured by their passing under the eye of the General Editor.

In short, this Work will be a Complete Library of all Forms and Precedents—other than litigious Forms—that a lawyer can possibly require.



THE LAW AND PRACTICE OF
A CASE STATED.

KN 361 BOU

35th Edit., 1903 (*and published annually in January*).

Price 25s.; for Cash, post free, 20s. 7d.

STONE'S JUSTICES' MANUAL.

BY THE LATE SAMUEL STONE.

Thirty-Fifth Edition

BY J. R. ROBERTS,

Clerk to the Justices of Newcastle-upon-Tyne.

LONDON :

SHAW & SONS, 7 & 8, FETTER LANE, E.C.
BUTTERWORTH & CO., 12, BELL YARD,
TEMPLE BAR, W.C.

THE LAW AND PRACTICE

OF

A CASE STATED

BY A COURT OF SUMMARY JURISDICTION FOR THE
OPINION OF THE HIGH COURT.

WITH

**Precedents of a Case, Affidavits, Notices,
and Bills of Costs.**

BY

A. C. FORSTER BOULTON,

Of the Inner Temple and the South-Eastern Circuit, Barrister-at-Law.



BUTTERWORTH & CO., 12, BELL YARD, TEMPLE BAR, W.C.
Law Publishers.

1902.

LONDON :

PRINTED BY BUTTERWORTH & CO., CRANE COURT, E.C.

PREFACE.

THE Author's desire in writing this Work on Appeals from Magistrates to the High Court is to present for the consideration of the Profession the conditions precedent to such an Appeal and the various steps necessary to secure its hearing by the High Court. There are many books written on Magistrates' Law, but it is believed that in none of them will be found that practical exposition of this branch of the subject which the great number of Appeals to the High Court from Courts of Summary Jurisdiction would lead the Practitioner to expect. The Author's endeavour throughout has been to explain in narrative form each stage in a case from the time the Magistrates give their decision in Petty Sessions to the period when the Divisional Court or the Court of Appeal have either reversed or confirmed such decision. This method, it is hoped, will

enable the most inexperienced Practitioner to avoid the mistakes which may prove fatal to the Appeal and will, at the same time, make simple and easy the various steps necessary to test the decision of the inferior Court on a question of law.

The Chapter on Law and Fact has been added to the Work in the hope that it may be of service in clearing up some of the doubts and difficulties which arise in cases on the border line between Law and Fact. The importance of realizing that no Appeal can be made to the High Court on a question of fact is seen from the numerous Appeals which are dismissed on the ground that they turn on a question of fact and not on a point of law, and it has been felt that no Work on this branch of Magistrates' Law would be complete without an attempt, however imperfect, to grapple with the question of how to distinguish between Law and Fact.

A. C. FORSTER BOULTON.

2, PUMP COURT, TEMPLE,
August, 1902.

TABLE OF CONTENTS.

	PAGE
PREFACE	v
TABLE OF CONTENTS	vii
TABLE OF CASES	xi
TABLE OF STATUTES	xix

CHAPTER I.

WHEN AN APPEAL WILL LIE BY SPECIAL CASE STATED BY A COURT OF SUMMARY JURISDICTION FOR THE OPINION OF THE KING'S BENCH DIVISION.

Acts under which case is stated	2
Who may apply for a case	3
Limited rights of appeal under the Summary Jurisdiction Act, 1857	3
Definition of a court of summary jurisdiction	3
Interpretation Act, 1889	5
Test as to character of proceeding	9
Magisterial discretion	9
Meaning of "person aggrieved"	10
Meaning of "heard and determined"	12
Rule to justices to state case	15
Enforcing order of High Court	16
Extension of right to appeal by special case under Summary Jurisdiction Act, 1879	17
When point of law should be raised before justices	21
Alternative appeal	25
<i>Certiorari</i> , prohibition, <i>mandamus</i>	29

CHAPTER II.

PROCEEDINGS NECESSARY TO SECURE AN APPEAL BY
SPECIAL CASE.

	PAGE
Conditions precedent	35
Application for special case	37
Service	38
Recognizances	39
Mode of reckoning time	41
When court may decline to state case	43
Delay in stating case	48
Certificate of refusal to state case	52
Discretion of High Court	54
Review of Justices Decisions Act	56
Statement of case	65
Form of case	65
Amendment of case	71
Service and transmission of case	73
Proceedings on default by appellant... ..	75

CHAPTER III.

PROCEEDINGS IN HIGH COURT.

Rules of practice	86
Crown Office Rules	86
Number of counsel on argument	89
When justices may be heard	90
Divisional court	91
Preliminary objections... ..	93
Proceedings subsequent to judgment... ..	95
Distinction between civil and criminal cause	99

CHAPTER IV.

LAW AND FACT.

Appeal lies on point of law only	107
Elements in a case	107
Distinction between law and fact	108

TABLE OF CONTENTS.

ix

	PAGE
Classification of facts	113
Faulty process of reasoning	116
Interpretation of statutes	118
Burden of proof... ..	120

CHAPTER V.

COSTS.

Power of High Court to give costs	130
Successful party entitled to costs	132
Application for costs	130
Costs usually given	133
Position of Crown with regard to costs	136
Liability of justices for costs	137
Appeal on questions of costs	139
Statutory fees	140
Precedents for bills of costs	141

APPENDIX.

Statutes	143
Precedents	149

INDEX.

TABLE OF CASES.

					PAGE
Adlington <i>v.</i> Coningham	...	...	...	...	105, 140
Anderson <i>v.</i> Reid	...	...	...	...	84
Ashdown <i>v.</i> Curtis	...	...	...	...	76
Aspinall <i>v.</i> Sutton	...	...	...	...	81
 Banks <i>v.</i> Goodwin	...	...	...	...	 78, 82, 83
Basingstoke School, <i>In re</i>	...	...	...	...	25, 45, 109
Bellasco <i>v.</i> Hannant	...	...	...	...	68, 109
Birmingham, <i>Ex parte</i>	...	...	...	...	7
Bishop <i>v.</i> Toler	...	...	...	...	67
Blake <i>v.</i> Beech	...	...	...	...	101
Boulter <i>v.</i> Kent	...	...	...	...	5
Bradshaw <i>v.</i> Bradshaw	...	...	...	...	126
Bridenberg <i>v.</i> Roberts	...	...	...	...	131
Broadbent <i>v.</i> Shepherd	...	...	...	...	97
Brown <i>v.</i> Vickers	...	...	...	...	42
Buckmaster <i>v.</i> Reynolds	...	...	...	...	66
 Callaghan <i>v.</i> Dolliven	...	...	...	...	 12
Cannan <i>v.</i> Abingdon (Earl of)	...	...	...	...	121
Cardigan, <i>Re</i> County Council of	...	...	...	...	94
Carter <i>v.</i> Mayor of Hastings	...	...	...	...	60
Caswell <i>v.</i> Cook	...	...	...	...	131, 133
Chapman <i>v.</i> Robinson	...	...	...	...	60
Christie <i>v.</i> St. Luke's, Chelsea	...	...	...	...	71
Clerkenwell Vestry <i>v.</i> Edmondson	...	...	...	...	119
Cobb <i>v.</i> Cobb	...	...	...	...	2
Cockle <i>v.</i> Treacy	...	...	...	...	140
Collman <i>v.</i> Roberts	...	...	...	...	125
Combridge <i>v.</i> Harrison	...	...	...	...	123

	PAGE
Cook <i>v.</i> Montague	131, 133
Cooper <i>v.</i> Pearce	125
Copley <i>v.</i> Burton	136
Crabtree <i>v.</i> Skelton	94
Crick <i>v.</i> Theobald	121
Crowther <i>v.</i> Bault	135
Crush <i>v.</i> Turner	99
Dann <i>v.</i> Manby	14
Davys <i>v.</i> Douglas	12, 132
Davis <i>v.</i> Pearce	15
— <i>v.</i> Harris	128
Deputies of Freeman of Leicester <i>v.</i> Hewitt	8
Dickins <i>v.</i> Gill	126
Diss Urban Sanitary Authority <i>v.</i> Aldrich ... 17, 18, 46, 132, 135	
Drapers' Company <i>v.</i> Hadden	10
Dyer <i>v.</i> Park	45
Edwards <i>v.</i> Roberts	77
Ellis <i>v.</i> William Cory & Son	129
Elstone and Rose, <i>In re</i>	32
Evans <i>v.</i> Hemingway	95
— <i>v.</i> Owen and Jones	124
Fenn <i>v.</i> Miller	112
Ferguson <i>v.</i> Green	111
Fortescue <i>v.</i> Vestry of St. Matthew	92
Fourth City <i>v.</i> East Ham	6, 8
Gamble, <i>Re</i>	102
Garnsworthy <i>v.</i> Payne	136
Gibbon <i>v.</i> Phillips	124
Glover <i>v.</i> Booth	134
Gloucester Board of Health <i>v.</i> Chandler	72, 73, 79
Godman <i>v.</i> Moses	106
Goldstein <i>v.</i> Vaughan	127
Gorham <i>v.</i> Brice	109
Great Northern and London and North Western Joint Committee <i>v.</i> Inett	38, 75, 132, 135
Green <i>v.</i> Pensam	47, 109, 114
Greenbank <i>v.</i> Sanderson	134, 135

TABLE OF CASES.

xiii

	PAGE
Halse <i>v.</i> Alder ...	134, 135
Hargreaves <i>v.</i> Taylor ...	109
Harrop <i>v.</i> Bailey ...	11
Harper <i>v.</i> Carr ...	6
—— <i>v.</i> Marcks ...	122
Hawes <i>v.</i> Peake ...	89
Hensley <i>v.</i> White ...	115
Hesketh <i>v.</i> Atherton ...	93
Heywood <i>v.</i> Whitehead ...	137
Hill <i>v.</i> Hunt ...	66
—— <i>v.</i> Wright ...	84, 85
Hoare <i>v.</i> Ritchie ...	94
Hobbs <i>v.</i> Dance... ..	115
Hoddinott <i>v.</i> Newton, Chambers & Co., Limited ...	111, 120
Holland <i>v.</i> Girling ...	105, 106
Holness <i>v.</i> Mackay and Davis... ..	116
Hughes <i>v.</i> Wavertree Local Board ...	40, 48
Irving <i>v.</i> Askew ...	19
Johnson <i>v.</i> Simpson ...	76
Jones <i>v.</i> Fallowfield ...	93
Kavanagh <i>v.</i> Glorney ...	23
Killick <i>v.</i> Graham ...	126
Kinnis <i>v.</i> Graves ...	15
Kirshenboim <i>v.</i> Salmon ...	116
Kitchen <i>v.</i> Shaw ...	24
Knight <i>v.</i> Hallwell ...	22, 66, 67
Kruse <i>v.</i> Johnson ...	91, 103
Lane <i>v.</i> Rendell... ..	127
Lavy <i>v.</i> London County Council ...	121
Lee <i>v.</i> Strain ...	134
Leicester, Deputies of Freemen of <i>v.</i> Hewitt ...	8
Liverpool United Gas Co. <i>v.</i> Everton ...	32
Lockhart <i>v.</i> St. Albans ...	38
Logsdon <i>v.</i> Booth ...	92
—— <i>v.</i> Trotter ...	128
London County Council <i>v.</i> Humphreys ...	122
—— <i>v.</i> Wood ...	127
Luton Board of Health <i>v.</i> Davis ...	7, 136, 140

	PAGE
Mackinnon v. Clark	82
Manchester, The City of	140
Manders v. Manders	2, 9
Markham, <i>Ex parte</i>	22, 56, 130, 133
Marshall v. Smith	...23, 66
Massey v. Morris	122
Mayer v. Harding	40, 81
Mayor of Southport v. Urban District Council of Birkdale	102
——— Walsall v. London and North Western Rail. Co.	26
Maude v. Baildon	119
——— v. Brooke	111—114
Mellor v. Denham	100, 103
Metropolitan Asylum District v. Hill and Others ...	140
Milner, <i>In re</i>	19
——— v. Great Northern Rail. Co.	128
Moore v. Smith	136
Moss v. Hancock	8, 11, 113
Morant v. Taylor	25
Morgan v. Edwards	74, 76, 78
Motteram v. Eastern Counties Rail. Co.	23, 66
Muir v. Hore	13, 23
Murphy v. Manning	120
Musther v. Musther	68, 70
 Newman v. Baker	 109
——— v. Jones	134
 Over v. Harwood	 120
Overseers of St. James' v. Overseers of St. Mary's, Battersea	66
 Palmer v. Snow... ..	 128
——— v. Thatcher	29, 48, 138
Payne v. Wright	102, 103
Peacock v. R.	42, 73, 74, 76
Pearce v. Bunting	2, 29, 49
Pearson v. Belgrave Mills Co.	124
Pennell v. Churchwardens of Uxbridge	...73, 74, 80, 82
Powell v. Kempton Park Co.	118
Power v. Wigmore	23
Price v. James	78

TABLE OF CASES.

xv

	PAGE
Pulbrook, <i>Ex parte</i>	101
Purkis v. Huxtable	21, 22, 66
Raine v. Jobson	124
Raynes Park Golf Co., <i>Re</i>	140
Redgrave v. Lloyd & Sons	124
R. v. Allen or Hodgson	1
— v. Anglesey JJ.	33, 61
— v. Antrim JJ.	31
— v. Athay	16
— v. Basingstoke School	25, 45, 109
— v. Baxendale	102
— v. Bell and Others, <i>Ex parte</i> Flinn & Sons	46, 53, 138
— v. Bethel	9
— v. Bird	9
— v. Bloxam	97
— v. Bowman, JJ. South Shields	15
— v. Bradley	33
— v. Brennan	47, 109
— v. Bridge	38, 46, 50, 51, 108
— v. Bromley JJ.	32
— v. Brown	18
— v. Cambridgeshire JJ.	31
— v. Carnarvon JJ.	26
— v. Central Criminal Court JJ.	101
— v. Chantrell	25, 27
— v. Cheshire JJ.	61
— v. Cotham	15
— v. Davey and Others	54
— v. Durham JJ.	64
— v. Essex	84
— v. Evans	121
— v. Farrant	32
— v. Fletcher	101
— v. Foote	100
— v. Great Yarmouth JJ.	31
— v. Haden Corser	12, 16, 96, 137
— v. Harwood	15
— v. Hereford	32
— v. Hodgson	1, 30

	PAGE
R. v. Hopkins	125
— v. Huntingtower or Richmond JJ.	31
— v. James	24
— v. JJ. of Central Criminal Court	101
— v. JJ. of Middlesex	42
— v. Kent JJ.	31
— v. Kerswill	102
— v. Knill	38
— v. Lewisham Guardians	34
— v. London & North Western Rail. Co.	29
— v. Longe	29, 32
— v. Lord Mayor of London	7
— v. Lundie	34
— v. Macclesfield	47
— v. Mainwaring	97
— v. Mead	123
— v. Middlesex JJ., 1832	10
— v. Middlesex JJ., 1843	42, 73
— v. Middlesex JJ., 1877	18, 19, 73
— v. Newton	38
— v. Nicholson and Others	11
— v. Overseers of Walsall	26
— v. Parlby	102
— v. Pollard	45
— v. Price	7
— v. Raffles	109
— v. Richards	15
— v. Riley	125
— v. Rutlandshire JJ.	20, 47
— v. Sharman	11
— v. Sheil and Others	21, 103, 119
— v. Stapleton	15
— v. Steele	100
— v. Surrey JJ., 1870	11
— v. Surrey JJ., 1888	11
— v. Taunton St. Mary	11
— v. Thomas	30
— v. Thornton	90
— v. Tyler	101, 102
— v. Waterman's Co.	11
— v. Watson and Others, Bradford JJ.	45, 137

TABLE OF CASES.

xvii

	PAGE
R. v. Whitchurch	100, 102, 103
— v. Wisbech JJ.	... 19
— v. Yeomans	... 44, 109, 114
— v. Young	... 101
Reid v. Wilson	... 128
Rio Grande, etc. Co., <i>Re</i>	... 140
Rishton v. Haslingdene Corporation	... 119
Robinson v. Sunderland	... 18
Rochdale Building Society v. Mayor of Rochdale	... 3, 36
Rook v. Schofield	101—103
Roper v. Greenwood	... 117
Russell v. Russell	... 120
Sandgate Local Board v. Pledge	... 6, 8
Sandiman v. Breach	... 24
Saunders v. Richardson	... 21
Savoy Hotel v. London County Council	... 128
Savoy Theatre v. Art Union	... 125
Schofield, <i>Ex parte</i>	101—103
Scott v. Baring	... 21
— v. Midland Rail. Co.	... 129
Seaman v. Burly	... 103
Shackell v. West	17, 95
Shepherd v. Folland	... 135
Slaughter v. Mayor of Sunderland	... 133
Smith & Son v. Kyle	... 129
Smith v. Butler	90, 135
Soloman v. St. Mary's, Islington	... 135
Somerset v. Wade	... 122
South Staffordshire Waterworks Co. v. Stone	... 37
Southcombe v. Guardians of Yeovil	29, 33
Southport, Mayor, etc. of v. Urban District Council of	
Birkdale	... 102
Spiers and Pond v. Bennett	... 125
Spurling v. Bantoft	... 89
Stanhope v. Thorsby	60, 61
Steele v. Brannan	... 23
Stinson v. Browning	... 133
Stokes v. Arkwright	... 127
Strong, <i>Ex parte</i>	... 24

	PAGE
Sweetman <i>v.</i> Guest	7
Syred <i>v.</i> Carruthers	84, 85, 93
Taylor <i>v.</i> Goodwin	121
——— <i>v.</i> Oram	109
Thomas <i>v.</i> Kelly	99
——— <i>v.</i> Van Os	9
Townsend <i>v.</i> Read	8
Truman, Hanbury, Buxton & Co. <i>v.</i> Kerslake	123
Umfreville <i>v.</i> London County Council	126
Unkles <i>v.</i> Attorney-General	69
Veazey <i>v.</i> Chattle	120
Venables <i>v.</i> Hardman	132
——— <i>v.</i> Venables	132
Waddell, <i>Ex parte</i>	140
Wakefield Local Board <i>v.</i> West Riding and Grimsby Rail. Co.	13, 131
Walker <i>v.</i> Delacombe	39, 40, 61
——— <i>v.</i> Welburn	72
Walton <i>v.</i> Walton	2
Watts <i>v.</i> Kent JJ.	12
Wednesbury Local Board <i>v.</i> Stephenson	131, 134, 135
Westmore <i>v.</i> Payne	38
White <i>v.</i> Redfern	9
Williams <i>v.</i> Powning	114
Williamson <i>v.</i> Belborough	17
——— <i>v.</i> Tierny	115
Wood <i>v.</i> London County Council	121
——— <i>v.</i> Walsh	111, 113
Woodhall, <i>Ex parte</i>	103, 104
Woodhouse <i>v.</i> Woods and Others	42, 74, 75
Wynne <i>v.</i> Ronaldson	42
Yates <i>v.</i> Higgins	121, 122
Youdon <i>v.</i> Crookes	132
Yorkshire Tire and Axle Co. <i>v.</i> Rotherham	68—70, 71

TABLE OF STATUTES.

	PAGE
29 Car. 2, c. 7. (Sunday Observance Act, 1677) ...	128
11 & 12 Vict. c. 43. (Summary Jurisdiction Act, 1848)—	
s. 9	33
12 & 13 Vict. c. 92. (An Act for the Prevention of Cruelty to Animals)—	
s. 2... ..	120
20 & 21 Vict. c. 43. (Summary Jurisdiction Act, 1857) ...	2, 3, 4, 13, 17, 18, 23, 35, 41, 43, 51—55, 57, 60, 65, 69, 72, 74, 77, 79, 81, 86, 93, 96, 97, 141, 148
24 & 25 Vict. c. 98. (Forgery Act, 1861)	12
25 & 26 Vict. c. 102. (Metropolis Management (Amend- ment) Act, 1862)	121
30 & 31 Vict. c. 90. (Revenue Act, 1867)	126
32 & 33 Vict. c. 62. (Debtors Act)	125
35 & 36 Vict. c. 26. (Review of Justices' Decisions Act, 1872)... ..	56, 90, 147
c. 77. (Metalliferous Mines Regulation Act, 1872)... ..	127
c. 94. (Licensing Act, 1872)... ..	122
36 & 37 Vict. c. 66. (Supreme Court of Judicature Act, 1873)—	
s. 45	86, 87
s. 49	139
38 & 39 Vict. c. 55. (Public Health Act, 1875)	101
c. 63. (Sale of Food and Drugs Act, 1875)... ..	125
c. 77. (Supreme Court of Judicature Act, 1875)... ..	87, 98
39 & 40 Vict. c. 59. (Appellate Jurisdiction Act, 1876) ...	98, 99
c. 80. (Merchant Shipping Act, 1876)—	
s. 28	122

	PAGE
41 & 42 Vict. c. 16. (Factory and Workshop Act, 1878)...	124, 127
c. 39. (Freshwater Fisheries Act, 1878)...	123, 124
c. 77. (Highways and Locomotives (Amendment) Act, 1878)	127
c. 79. (Weights and Measures Act, 1878) ...	127
42 & 43 Vict. c. 49. (Summary Jurisdiction Act, 1879)—	
s. 33 ... 3, 6, 10, 11, 36, 37, 39, 41, 42,	
51—53, 61—65, 77, 86, 102, 148	
45 Vict. c. 14. (Metropolis Management and Building Acts (Amendment) Act, 1882)...	123
46 & 47 Vict. c. 51. (Corrupt and Illegal Practices Prevention Act, 1883)	82
47 & 48 Vict. c. 76. (Post Office (Protection) Act, 1884) ...	126
c. 61. (Supreme Court of Judicature Act, 1884)—	
s. 4... ..	91
s. 23	87
50 & 51 Vict. c. 58. (Coal Mines Regulation Act, 1887) ...	123
c. 67. (Allotments and Cottage Gardens Compensation for Crops Act, 1887)	125
51 & 52 Vict. c. 43. (County Courts Act, 1888)	128
c. 64. (Law of Libel Amendment Act, 1888)	101
52 & 53 Vict. c. 63. (Interpretation Act, 1889)—	
s. 13 (11)	4
54 & 55 Vict. c. 75. (Factory Act, 1891)—	
s. 6 (2)	124
c. 76. (Public Health (London) Act, 1891)—	
s. 141	123, 126
55 & 56 Vict. c. 62. (Shop Hours Act, 1892) ...	128, 129
57 & 58 Vict. c. 42. (Quarries Act, 1894)	129
c. 213. (London Building Act, 1894)...	121
58 & 59 Vict. c. 37. (Factory and Workshop Act, 1895) ...	129
60 & 61 Vict. c. 37. (Workmen's Compensation Act, 1897)	117



THE LAW AND PRACTICE OF A CASE STATED.

CHAPTER I.

WHEN AN APPEAL WILL LIE BY SPECIAL CASE STATED BY A COURT OF SUMMARY JURIS- DICTION FOR THE OPINION OF THE KING'S BENCH DIVISION.

AFTER the hearing and determination by a justice or justices of the peace of an information or complaint or other proceeding of a court of summary jurisdiction, any person aggrieved who desires to question the conviction, order, determination, or other proceeding of the court on the ground that it is erroneous in point of law or in excess of jurisdiction, may appeal to the Divisional Court of the High Court of Justice. The appeal is made by applying to the justice or justices who constitute the court of summary jurisdiction to state a special case for the opinion of the High Court, setting forth the facts and the grounds on which the proceeding is questioned (*a*).

(*a*) When it is objected that the court of summary jurisdiction has acted in excess of jurisdiction a *certiorari* may issue, although a case has been stated under the Summary Jurisdiction Act, and although it is still pending (*R. v. Allen* or *Hodgson* (1864), 12 W. R. 423 ; 4 B. & S. 915 ; 33 L. J. M. C. 98 ; 10 Jur. (N.S.) 796 ; 9 L. T. 761).

There is, apparently, nothing to preclude a special case being stated concurrently with an application for a *certiorari*. In *Pearce v. Bunting*, [1896] 2 Q. B. 360 ; 65 L. J. M. C. 131 ;

Acts under which case is stated.—There are two statutes which regulate this method of appeal. The first is the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2 : “ After the hearing and determination by a justice or justices of the peace of any information or complaint, which he or they have power to determine in a summary way by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying (*b*) ; and such party, hereinafter called the appellant, shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the

75 L. T. 184 ; 60 J. P. 695, and *post*, p. 29, a rule *nisi* had been obtained for a *certiorari*, and a special case had also been stated by magistrates, and the two arguments were heard together, but see *post*, p. 30.

There is no power to state a case for the opinion of the King's Bench Division on an application to justices by a wife for an order under s. 11 of the Summary Jurisdiction (Married Women) Act, 1895 (*Manders v. Manders*, [1897] 1 Q. B. 474 ; 66 L. J. Q. B. 296 ; 45 W. R. 287 ; 61 J. P. 105 ; *post*, p. 8). The appeal in such a case lies to the Probate, Divorce and Admiralty Division, and notes of the evidence must be taken by the magistrate's clerk for the use of the judges of the Probate, Divorce and Admiralty Division, and on the appeal these notes form the case (*Cobb v. Cobb*, [1900] P. 145 ; 69 L. J. Q. B. 52 ; 82 L. T. 626 ; 64 J. P. 200 ; *Walton v. Walton*, [1900] P. 147 ; 69 L. J. P. 54 ; 82 L. T. 627 ; 48 W. R. 622).

(*b*) The power of the appellant to choose his own court is now taken away (see 36 & 37 Vict. c. 66, s. 45, and R. S. C., O. LIX., r. 17, and *post*, p. 87).

other party to the proceeding in which the determination was given, hereinafter called the respondent."

The second statute is the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33 :

Who may apply for a case. — "Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated" (s. 33, *supra*).

Limited rights of appeal under the Summary Jurisdiction Act, 1848.—The statute 20 & 21 Vict. c. 43 (Summary Jurisdiction Act, 1857), is limited to a hearing and determination of an information or complaint in a summary way ; the statute 42 & 43 Vict. c. 49 (Summary Jurisdiction Act, 1879), includes a conviction, order, determination or other proceeding of a court of summary jurisdiction. The latter enactment is merely a development of the former, but extends the remedy. A case stated under either Act is the same thing, because justices who state a case under 20 & 21 Vict. c. 43 are taken to have stated it under all their powers, including those conferred by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) (*Rochdale Building Society v. Mayor of Rochdale* (1886), 51 J. P. 134. See *post*, p. 36).

What is a court of summary jurisdiction.—Assuming, therefore, that one of the parties affected

by the conviction, order, determination or other proceeding of a court of summary jurisdiction desires to question the decision by an appeal to the High Court, it becomes necessary to ascertain if such a right of appeal exists in the particular case. In the first place, Is the proceeding against which the person aggrieved desires to appeal a conviction, order, determination or other proceeding of a *court of summary jurisdiction*?

Definition of a court of summary jurisdiction.—

The expression “court of summary jurisdiction” by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13 (11), “shall mean any justice or justices of the peace, or other magistrate, by whatever name called (*c*), to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law”; and by s. 13 (7) of the same Act the “expression ‘the Summary Jurisdiction (England) Acts’ and the expression ‘the Summary Jurisdiction (English) Acts’ shall respectively mean the Summary Jurisdiction Act, 1848, and the Summary Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them.”

At first sight this definition of a court of summary jurisdiction would seem to apply to every justice of the peace doing any act whatever which by law he was entitled to do. An examination, however, of the Act and of the case of *Boulter v. Kent JJ.*, [1897]

(*c*) By s. 12 Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), the words “justice or justices in this Act shall include a magistrate of the police courts of the metropolis and any stipendiary magistrate.”

A. C. 556 ; 66 L. J. M. C. 354 ; 61 J. P. 500 ; W. N. 78 (4), shows that "a court of summary jurisdiction" will only include justices when they are exercising summary jurisdiction.

Interpretation Act, 1889.—The Interpretation Act, 1889, is, according to its title, a consolidating enactment. It is not intended to extend or alter the law, and it is therefore necessary to examine what the law was at the time the Act of 1889 came into force. Section 13 above quoted repealed s. 50 of the Act of 1879 and s. 7 of the Act of 1884, and for them substituted sub-s. (11), which appears to be compounded out of the two repealed sections. The words of the subsection are very wide ; but it has been held by the House of Lords in *Boulter v. Kent JJ.*, H. L., [1897] A. C. 556 ; 61 J. P. 500 ; W. N. 78 (4), that the words of the section do not include licensing justices. The section, in fact, does not make justices in all cases a court of summary jurisdiction, but only when they are sitting as a court and exercising summary jurisdiction.

Court of summary jurisdiction defined by House of Lords : Boulter v. Kent Justices.—In the words of Lord DAVEY, in *Boulter v. Kent JJ.*, *supra*, "the only effect of the section is to apply the procedure of the Summary Jurisdiction Acts to the justices exercising summary jurisdiction whether that jurisdiction was derived from the Acts themselves or from some other source."

The real test would appear to be, Are the justices occupying the position of judges ? Where they are, the Summary Jurisdiction Acts apply ; where they are not, such Acts have no application.

In the words of Lord HERSCHELL, in the same case, "the enactment defining a court of summary jurisdiction may well be construed as meaning no more than this,—that every justice is a court of summary jurisdiction within the meaning of the Act of 1879, or any other law relating to summary jurisdiction, in all matters pertaining to the exercise of summary jurisdiction by magistrates, however he may have derived his authority to exercise that jurisdiction."

Can a case be stated on application for distress warrant?—It has been the practice to allow magistrates to state a case for the King's Bench Division on the hearing of an application that a distress warrant be issued for non-payment of a rate (*Fourth City Mutual Building Society v. East Ham*, [1892] 1 Q. B. 661; 56 J. P. 440; *Soloman v. St. Mary's, Islington*, *Times*, Feb. 16, 1900).

In *Harper v. Carr* (1797), 7 T. Rep. 270; 4 R. R. 440, at p. 275, it was expressly decided that justices in granting a distress warrant do not act ministerially; that they exercise a discretion after inquiries into the circumstances of the case; that the person charged must be heard in his defence, and must be summoned before a warrant of distress is granted.

In *Sandgate Local Board v. Pledge* (1885), 14 Q. B. D. 730; 33 W. R. 565; 52 L. T. 546; 49 J. P. 342, it was held that a special case may be stated by justices upon an application to enforce payment of a general district rate under s. 256 of the Public Health Act, 1875.

Poor and local rates.—The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), enables an aggrieved

person to obtain a decision upon a question of law arising upon any matter, including questions of law that arise upon the validity of rates, this jurisdiction not having been ousted as to poor rates by s. 10 of the Summary Jurisdiction Act, 1884 (*R. v. Lord Mayor of London* (1887), 52 J. P. 70 ; 57 L. T. 491).

The case of *R. v. Lord Mayor of London*, *supra*, raised the question of whether a justice sitting to hear an application for issuing a distress warrant was acting as a court of summary jurisdiction. The same question had been previously raised in *R. v. Price* (1880), L. R. 5 Q. B. D. 300 ; 49 L. J. M. C. 49 ; 28 W. R. 615 ; 44 J. P. 248 ; 42 L. T. 439, and it was in that case held that under such circumstances the justice was not so acting. Since *R. v. Price*, however, the statute of 1884, since repealed, but re-enacted by the Interpretation Act of 1889, *ante*, p. 5, has been passed, and Lord COLERIDGE, C.J., in *R. v. Lord Mayor of London*, *supra*, was of opinion that owing to the statute of 1884 a magistrate sitting to hear an application for the issue of a distress warrant had the power to state a case.

In *R. v. Lord Mayor of London* the point of law was merely one of evidence of the liability of a party to be rated, of occupation or visible occupation, questions which it is perfectly competent for a justice to entertain (*Ex parte Birmingham* (1849), 18 L. J. M. C. 41 ; *Luton Board of Health v. Davis* (1860), 2 El. & El. 678 ; 24 J. P. 677 ; 29 L. J. M. C. 173 ; 6 Jur. (N.S.) 580 ; 8 W. R. 411 ; 2 L. T. 172. See also *Sweetman v. Guest* (1868), L. R. 3 Q. B. 262 ; 37 L. J. M. C. 59 ; 18 L. T. 52 ; 16 W. R. 426 ; 32 J. P. 212).

When the authority to make a rate is questioned in point of law, justices are now bound to state a case

(*Fourth City Mutual Building Society v. East Ham* (1897), *supra*). For instance, to take the illustration given by SMITH, J., in this case : supposing a distress warrant was applied for to levy the church rate, ought the justices to issue the warrant ? Clearly not. Why ? Because they would clearly know, or ought to know, that no statute existed under which payment of the church rate could be enforced, and so in the present case they ought to have inquired whether any statute existed under which the rate could be levied upon an owner instead of an occupier, and whether, if so, the provisions of the Act had been complied with."

Where, however, the duties of the magistrates with regard to the application for a distress warrant are purely ministerial, it is submitted that the proper course would be to appeal against the rate to quarter sessions.

Further examples of proceedings before justices which are included in the term "summary jurisdiction" are : orders for disallowance of an item in the accounts of a surveyor of highways (*Townsend v. Read* (1861), 10 C. B. (N.S.) 308 ; 30 L. J. C. P. 223 ; 44 L. T. 447 ; 9 W. R. 659) ; orders to enforce rates under the Public Health Act, 1875 (38 & 39 Vict. c. 55) (*Sandgate Local Board v. Pledge* (1885), *supra*) ; orders for restitution of stolen property under 24 & 25 Vict. c. 96, s. 100 (*Moss v. Hancock*, [1899] 2 Q. B. 111 ; 68 L. J. Q. B. 657 ; 80 L. T. 693 ; 47 W. R. 698 ; 63 J. P. 517, and *post*, p. 113). And a case may be stated when there is an appeal to justices notwithstanding that the particular statute declares that the decision of the justices shall be final (*Deputies of Freemen of Leicester v. Hewitt* (1892), 62 L. J. M. C. 51 (*d*)). A case cannot be stated upon a point

(*d*) See the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25).

of law arising upon an application for an order under the Summary Jurisdiction (Married Women) Act, 1895 (*Manders v. Manders*, [1897] 1 Q. B. 474 ; 66 L. J. Q. B. 296 ; 45 W. R. 287 ; 61 J. P. 105 ; *ante*, p. 2 n.)

Nor, having regard to the decision in *Boulter's Case ante*, p. 5, can licensing justices state a case (*R. v. Bird* (1898), 62 J. P. 309).

The question has been more than once raised whether magistrates who are acting in a ministerial capacity only have power to state a case, that is, Are they a court of summary jurisdiction ?

Test as to character of proceeding.—The test of an act being judicial or ministerial is, whether the justices are entitled to withhold their assent, if they think fit, or whether they can be compelled by *mandamus* or rule to do the act in question.

See note (m), p. 21, Paley, 1892.

Magisterial discretion must be exercised judicially.—In the case of *R. v. Bethel* (1898), 80 L. T. 492 ; 63 J. P. 453, it was held that justices acting under s. 299 of the Lunacy Act, 1890 (53 Vict. c. 5), had no power to state a case, as they were not sitting as a court of summary jurisdiction.

Where magistrates have a discretion they must exercise a proper judicial discretion (*per* DARLING, J., *ibid.*).

In *Thomas v. Van Os*, [1900] 2 Q. B. 448 ; 69 L. J. Q. B. 666, a case was stated on the application of a medical officer of health and remitted to the magistrate to perform the *ministerial* act of ordering the destruction of unsound fruit. The High Court in this case were of opinion that the magistrate was bound to condemn fruit found to be unsound ; and see *White v. Redfern* (1879), 5 Q. B. D. 15.

When an appeal lies to High Court.—If the proceeding against which the party aggrieved desires to appeal is a conviction, order, determination, or other proceeding of a court of summary jurisdiction, then an application can be made for a special case for the opinion of the High Court, provided a question of law is involved or that the court has acted in excess of jurisdiction and subject to the procedure for properly carrying the case up to the High Court.

But before considering the questions which arise for the consideration of the “person aggrieved” it is necessary to determine the meaning of the term.

Meaning of person aggrieved.—Who is any “person aggrieved”? According to BRUCE, J., in *Drapers Company v. Hadden* (1892), 57 J. P. 200 ; 9 T. L. R. 36, it means a person whose legal rights are directly affected by the decision..

In an old decision, *R. v. Middlesex* (1832), 3 B. & A. 938, which was followed in *Drapers Company v. Hadden*, it was held that under the statute 9 Geo. 4, c. 61, for regulating the granting of licenses to innkeepers, and which gives the right of appeal to any person who shall think himself aggrieved, that the words “person who shall think himself aggrieved” mean a person *immediately* aggrieved, as by refusal of a license to himself by fine, etc., and not one who is only consequentially aggrieved. In *Drapers Company v. Hadden*, the facts were that a tenant of the company left a package on the pavement of a court (in the City), and was charged under 30 & 31 Vict. c. 134, s. 6, with leaving the package longer than was necessary. The Drapers Company, the freeholders, contended that

the court was private property for the sole use of the tenants, and was not a street. On the tenant being convicted, a case was stated on the application of the Drapers Company (the appellants), and it was held that the appellants were not "a person aggrieved," and, consequently, not entitled to have a special case stated under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33. See also, *Rex v. Taunton St. Mary* (1815), 3 M. & S. 465; *R. v. Surrey JJ.* (1870), 39 L. J. M. C. 145; L. R. 5 Q. B. 466; *R. v. Surrey JJ.* (1888) 52 J. P. 423; *R. v. Waterman's Company*, [1897] 1 Q. B. 659; 66 L. J. Q. B. 308; *R. v. Nicholson and Others* (1899), 68 L. J. Q. B. 103; *R. v. Sharman* (1898), 67 L. J. Q. B. 460).

The purchaser against whom an order of restitution has been made, is a "person aggrieved" within the meaning of s. 33 (1) of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and is therefore entitled to appeal against the order to the High Court, by way of special case (*Moss v. Hancock* (1899), *ante*, p. 8, and *post*, p. 113. See, also, *Harrop v. Bailey* (1856), 6 El. & Bl. 218; 25 L. J. M. C. 107; 2 Jur. (N.S.) 882; 4 W. R. 461).

When the secretary of a society is summoned as such secretary before justices to answer a complaint against the society, and an order is thereupon made against the society, the society is substantially the appellant for the purpose of procuring a case to be stated under the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43); and, therefore, when after the application for the case, the secretary has resigned his post, and given the justices notice of the withdrawal of the application, the society may nevertheless continue the proceedings and obtain a rule ordering the case to be stated, in case of a refusal

by the justices (*Watts v. Kent JJ.* (1866), 35 L. J. M. C. 190 ; 14 L. T. 448)(e).

Either party may appeal by special case.—Where either party is dissatisfied with the decision on a point of law, there is a right of appeal. Consequently, the dismissal of an information or complaint is within the statute, and when an acquittal has taken place, the case may be remitted to the magistrates for conviction. See *Davys v. Douglas* (1859), 4 H. & N. 180 ; 28 L. J. M. C. 193 ; 7 W. R. 327, and *R. v. Haden Corser* (1892), 8 T. L. R. 563.

Meaning of “heard and determined.”—But assuming that the party applying for a case is “anyone aggrieved” within the meaning of the statute, two further questions should be answered before the actual notice of application be given. First, have the magistrates “heard and determined” the case? and secondly, has the court decided erroneously with regard to the law applicable to the case, or acted in excess of jurisdiction?

A third question, but one with which we are not specially concerned in this work, is whether the court has decided wrongly on the facts, in which case, an appeal may perhaps be made to quarter sessions.

And first as to the question, Has the court heard and determined the matter? The words of the statute are “after the hearing and determination.” These words mean that the matter has been concluded, that a verdict, in fact, has been given, either of conviction or acquittal, if the matter is one on information or complaint, or if

(e) This case was overruled by *Callaghan v. Dollwin* (1869), 38 L. J. M. C. 110 ; 17 W. R. 733 ; L. R. 4 C. P. 288 ; 21 L. T. 827, on another ground, namely, that by the rules of the society there was no appeal from justices.

it is a civil question that the justices have decided upon the facts one way or another.

When justices decline to hear, there is no hearing and determination.—If, however, the justices have declined to hear the parties on the ground that there is no jurisdiction, it is evident that there is no “hearing and determination,” and, consequently, no case can be stated. There are two cases which illustrate this point. The first is that of *Wakefield Local Board v. West Riding Rail. Co.* (1865), 6 B. & S. 794 ; 35 L. J. M. C. 69 ; 12 Jur. (N.S.) 160 ; 13 L. T. 590 ; 14 W. R. 100 ; 10 Cox, C. C. 162 ; 30 J. P. 628. In this case the justices decided, because one of them was interested in the subject matter, that they had no jurisdiction. They did not hear and determine the matter before them, and on a special case being stated on the point as to whether they had or had not jurisdiction, BLACKBURN, J., in ordering the case to be struck out, said “I think nothing can be clearer than that the justices made a mistake in granting the case, as the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), does not apply. The justices, when the question of jurisdiction was raised before them, decided, rightly or wrongly, that they had no jurisdiction. If they were right, then the parties can only go and renew the information before other justices who are not interested. If they were wrong, then the remedy is to apply for a rule (see *post*, p. 15) commanding them to hear and determine the case.”

The other case, *Muir v. Hore* (1878), 47 L. J. 17 ; 37 L. T. 315, is distinguished from *Wakefield Local Board v. West Riding Rail. Co.* by the fact that here the justices heard the case before they determined they had no jurisdiction, and it was held by the Queen’s Bench Division that a case was properly stated, there

having been a hearing and determination. It was, in fact, necessary in *Muir v. Hore* that the facts should be heard in order that the justices might determine whether or not they occurred within a certain ambit, and until this was done the question of jurisdiction could not be decided.

In *Dann v. Manby* (1872), 26 L. T. (N.S.) 730 ; 20 W. R. 627, the respondent was charged before justices of the county of Kent sitting at Dartford, out of the metropolitan police district, with committing an offence at Bexley, which is a place within the metropolitan police district not assigned to any of the police courts of the metropolis:—*Held*, that they had no jurisdiction to try the offence. In this case the magistrates heard the facts, and were satisfied that the offence was committed, but stated a case as to jurisdiction, and dismissed the information.

“It is obvious that the distinction between an erroneous decision and a failure to hear and determine according to law may be very fine, and the cases on the subject show that it is so. I take the governing principle to be that if the justices have applied themselves to the consideration of a section of an Act of Parliament, and have, no matter how erroneously, determined the question which arises upon it before them, their decision cannot be reviewed by process of *mandamus*. That is so whether there is an appeal from their decision or not. If there is an appeal, *mandamus* will not lie ; if there is not, their decision is final. But when it appears they have taken into consideration matters which are absolutely outside the ambit of their jurisdiction, and absolutely apart from the matters which by law ought to be taken into consideration, then they have not heard and determined according to law” :

WILLS, J. (*R. v. Cotham*, [1898] 1 Q. B. 806 ; 67 L. J. Q. B. 632 ; 46 W. R. 512 ; 62 J. P. 435).

When court declines to hear, a rule may be obtained.—When the court wrongly decides a preliminary point, and in consequence declines to hear the case, a rule will be granted, there being no hearing and determination (*R. v. Richards* (1851), 20 L. J. Q. B. 352 ; 2 L. M. & P. 263 ; 15 Jur. 358 ; *R. v. Stapleton* (1862), 21 L. J. Q. B. 8 ; 15 Jur. 1177 ; *Davis v. Pearce* (1870), L. R. 5 C. P. 435 ; 22 L. T. 441 ; 18 W. R. 736 ; *R. v. Harwood* (1863), 22 L. J. Q. B. 217 ; 1 L. M. & P. 144 ; 17 Jur. 87).

Proper course when magistrates equally divided.—

When magistrates are equally divided upon the hearing of an information, the proper course is to adjourn the case in order that a rehearing before a reconstituted bench may be had. If, however, the justices dismiss the information, a subsequent summons for continuing the offence will not lie against the same party if the circumstances remain the same. As long as the dismissal of the first information stands, it exists as a decision between the same parties upon the same subject matter given by a competent tribunal, and the second bench has no power to reopen the hearing (*Kinnis v. Graves* (1898), 67 L. J. Q. B. 583 ; 78 L. T. 502 ; 46 W. R. 480).

Where the justices acted as they did, not because they disbelieved the evidence, but from a consideration apart from the facts which they ought not to have taken into account, then there is no hearing and determination according to law, and a *mandamus* will be granted (*R. v. Bowman, JJ. South Shields*, [1898]

1 Q. B. 663 ; 67 L. J. Q. B. 463 ; 62 J. P. 374 ; 78 L. T. 230 ; 14 T. L. R. 303 ; *R. v. Athay* (1758), 2 Burr. 653).

Broad rule as to hearing and determination.—The broad rule that may be inferred from the cases is that when on a preliminary objection to the jurisdiction the justices decline to hear the case on that ground, no case can be stated for the opinion of the High Court, but when it is necessary to hear the facts before deciding on the jurisdiction, then an appeal will lie by special case. When the justice or justices shall have heard and determined the case, and afterwards state a case, then the hearing and determination is subject to the opinion of the High Court. In *R. v. Haden Corser*, *ante*, p. 12, a case was remitted to the magistrate with the intimation of the court that he should have convicted. The complainant applied to him to reinstate the case and convict, but he held he had no jurisdiction to order a man to come up to be committed when the summons against him had been heard and dismissed. The Queen's Bench Division, in making the rule absolute for a *mandamus*, held that the magistrate was not required to rehear the case. Having already heard it and decided it, subject to a case for the opinion of the High Court, it was his duty, when the court decided in favour of a conviction, to have convicted. The magistrate who pronounced the original order could have enforced the decision of the High Court in the same manner as they might have enforced the original order had it not been appealed against.

— **Enforcing order of High Court.**—Any conviction or order which is affirmed, amended, or made by the superior court may be enforced by the justices as if their determination had not been appealed against.

See Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 6; *Shackell v. West* (1859), 2 El. & El. 326; 29 L. J. M. C. 45; 8 W. R. 22; 1 L. T. 28; 6 Jur. (N.S.) 95; 24 J. P. 22.

In *Shackell v. West*, *supra*, A. summoned a pawnbroker under s. 14 of the Pawnbrokers Act (39 & 40 Geo. 3, c. 99), for neglecting or refusing to deliver back a watch which had been stolen through the pawnbroker's negligence. The justices made an order that the goods being lost by the negligence of the pawnbroker, he should restore it or pay the cost.

The case was remitted to magistrates for rehearing, as they had convicted under the wrong section.

If a person in the opinion of the justice is illegally in custody, no information having been taken, and no summons or warrant issued against him, and the justice discharges the prisoner on these grounds, there is no hearing or determination within the statute, and a case cannot be stated (*Williamson v. Bellborough* (1864), 28 J. P. 745).

The ground upon which the High Court dismissed the case was stated by COCKBURN, C.J., to be that there was no hearing and determination of an information or complaint.

Extension of right to appeal by special case under Summary Jurisdiction Act, 1879.—An illustration of the extension of the right to have a case stated under the Act of 1879 is afforded by the case of *Diss Urban Sanitary Authority v. Aldrich* (1877), 2 Q. B. D. 179; 46 L. J. M. C. 183; 36 L. T. 663; where it was held that justices had no power to state a case on refusing to make an order authorising the local authority to enter

premises under the Public Health Act, 1875, s. 305, inasmuch as this is not the determination of a complaint within 20 & 21 Vict. c. 43, s. 2.

Now, since the passing of the Summary Jurisdiction Act, 1879, these cases would no doubt come within the wider scope of this statute ; in fact when a similar case to *Diss v. Aldrich*, *ante*, p. 17—that of *Robinson v. Sunderland*, [1899] 1 Q. B. 751 ; 63 J. P. 19—was argued before the Divisional Court, no objection was raised to the jurisdiction.

Test as to what constitutes declining of jurisdiction.—A good test of what constitutes a declining of jurisdiction is given by COLERIDGE, J., in *R. v. Brown* (1857), 7 E. & B. 757 ; 26 L. J. M. C. 183 ; 3 Jur. (N.S.) 745 ; 5 W. R. 625 : “ If the magistrates say that, whatever they may think as to the merits, they are not at liberty to give a judgment, because they are unable *for want of right parties or other similar objection* to enter into the question, that is a declining of jurisdiction.”

Motion for mandamus.—The general rule is well established that the court will not, upon motion for *mandamus*, review the decision of the justices acting within their jurisdiction, either upon law or fact, unless it is shown that they have in effect declined jurisdiction by a decision wrong in law upon a preliminary point (*R. v. Middlesex JJ.* (1877), 46 L. J. M. C. 226 ; 25 W. R. 510).

When mandamus lies.—A *mandamus* lies to any inferior tribunal, for it is the peculiar business of the Court of King's Bench to superintend all inferior tribunals, and therein to enforce the due exercise of

those judicial or ministerial functions with which the Crown or the legislature have invested them (3 Bla. Com. 111).

When High Court has jurisdiction.—To enable the High Court to interfere, the inferior court must have improperly declined jurisdiction (*Irving v. Askew* (1869), L. R. 5 Q. B. 208 ; 20 L. T. 584 ; 39 L. J. Q. B. 118).

When the court has accepted jurisdiction and entered into the merits of a case, and then wrongly declined jurisdiction, the court will refuse to grant a rule (*In re Milner* (1851), 15 Jur. 1037).

In *R. v. Wisbech JJ.* (1890), 54 J. P. 743 ; 7 T. L. R. 21, the defendant raised an objection to the initial stage of the proceedings, viz., that the information was not laid in time, and was therefore bad. The justices heard the argument on the point raised, and decided that it was a fatal objection, and dismissed the information. The complainant applied to the High Court for a *mandamus* to compel the justices to hear the case. The court (HAWKINS and STEPHEN, JJ.) held that the proper course should have been to apply for a case, and discharged the rule.

Where magistrates in quarter sessions on an appeal from magistrates have jurisdiction and decline to exercise it on a preliminary point, a *mandamus* will be granted, but not so unless the jurisdiction be declined (*R. v. Middlesex* (1877), 2 Q. B. D. 516 ; 46 L. J. M. C. 225 ; 41 J. P. 629 ; 36 L. T. 403 ; 25 W. R. 610).

No appeal lies unless justices have heard and determined.—From these cases it would appear that, unless the court of summary jurisdiction has “heard

and determined " the matter before it, no case can be stated for the opinion of the High Court. The remedy is in an application to the High Court for a *mandamus*, which will, in effect, procure the hearing and determination of the matter by the inferior court according to law.

Justices may be compelled to state case.—An order in the nature of *mandamus* lies to compel justices to state cases under the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 5. Justices, however, are not bound to state a case where the application discloses no point on which a case ought to be granted (*R. v. Rutlandshire JJ.* (1866), 13 L. T. 722).

Erroneous decision in law or excess of jurisdiction.—The next question to be answered is, Has the court acted erroneously with regard to the law applicable to the matter, or acted in excess of jurisdiction? Naturally this inquiry opens up a wide field for investigation. Is there a point of law at all involved (*f*)? Is it certain that the supposed point of law is not in reality a question of fact? It is by no means easy to answer the question, as in many cases the distinction between law and fact is very fine. But the question must or ought to be answered before the party aggrieved commits himself to the risk of an appeal. We do not, however, propose in this chapter to deal with the interesting subject of Law and Fact, as it will be dealt with in a separate chapter (*f*). For the moment we must assume that there is a point of law

(*f*) See Chap. IV., *post*, p. 107. Under the Summary Jurisdiction Act, 1857, an appeal was given on an error of law only; the Summary Jurisdiction Act, 1879, adds a second ground, *i.e.*, excess of jurisdiction.

involved (*g*), and, in the opinion of the party aggrieved, the justices have dealt with it erroneously.

Should point of law be raised before justices?—

It is not even necessary that the point of law was raised and argued before the justices. It will be sufficient if it is one which might be inferred from facts which were raised (*h*). In the case of *Purkis v. Huxtable* (1859), 1 El. & El. 780; 28 L. J. M. C. 221; 5 Jur. (N.S.) 790, the appellant had been convicted of knowingly permitting persons of bad character to assemble in his public-house. At the hearing it was objected on his behalf that the persons assembled were there only for the purposes of refreshment. The justice being of the opinion that there was no evidence to that effect, convicted the appellant. On a case being stated, it was contended that there was no evidence on the facts stated, that the appellant knowingly permitted the said persons to assemble :—*Held*, that this objection not having been raised before the justices, could not be raised upon appeal. If the appellant had raised the point before the court of summary jurisdiction, evidence might have been called to prove that he had knowingly permitted the said persons to assemble in his house,

(*g*) The point of law must be one which has not been previously decided by the Superior Court (*R. v. Sheil and Others* (1900), 82 L. T. 587); but see *Scott v. Baring* (1895), 64 L. J. M. C. 200; 15 R. 216; 72 L. T. 495, where it was decided that in determining the reasonableness of a claim of right, justices are not entitled to consider the effect of a previous decision of the High Court as to the *locus in quo* which at the present time may not be applicable to the case. Important legal questions may be re-argued upon a new case before a new court specially constituted under s. 17 of the Appellate Jurisdiction Act, 1876, of more than two judges (*Saunders v. Richardson* (1881), 7 Q. B. D. 388; 50 L. J. M. C. 137; 45 L. T. 319; 29 W. R. 800; 45 J. P. 449, and *post*, p. 91).

(*h*) See note (*g*), *supra*.

and thus disposed of the objection, but he did not do so, and it was evident that the appellant desired to raise a point of law which could only be inferred from a fresh fact, or one which at any rate did not appear in the case, and this could not be done. The case of *Ex parte Markham*, *infra* (1870), 34 J. P. 150 ; 21 L. T. (N.S.) 748 ; 18 W. R. 258, makes this sufficiently clear.

When facts admitted, fresh point of law may be raised in High Court.—In the above case of *Ex parte Markham* it was held that where the facts are admitted, a point arising out of them, though not taken before the justices, may be argued when the case is heard by the Divisional Court. The conviction in *Purkis v. Huxtable* was confirmed because no evidence of facts which might have formed the basis of a legal argument had been given. In *Ex parte Markham* the facts upon which a fresh legal argument was founded were admitted by the case. In *Knight v. Halliwell* (1874), L. R. 9 Q. B. 412 ; 38 J. P. 470 ; 43 L. J. M. C. 113 ; 30 L. T. 359 ; 22 W. R. 689, a point not raised before the justices was argued before the Queen's Bench Division, and COCKBURN, C.J., in giving judgment for the appellant upon the new point, said, "Any objection to the justices' decision which arises from the facts as the justices have stated them, may be considered by the court," and BLACKBURN, J., in the same case, and referring to *Purkis v. Huxtable*, said, "The answer to the argument derived from the cases cited is obvious. The objection raised there might, if taken before the justices, have been cured by further evidence." Where there is a point of law, the effect of which no evidence could alter, it is competent for this court to consider it under the Summary

Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), although the justices do not expressly reserve it. See also *Kavanagh v. Glorney* (1876), 1. R. 10 C. L. 210.

Two other cases which from their head notes might appear to support the proposition that no point not raised before the magistrates can be raised on the argument of the special case, are *Marshall v. Smith* (1873), L. R. 8 C. P. 416; 42 L. J. M. C. 108; 28 L. T. (N.S.) 538; 37 J. P. 476, and *Motteram v. Eastern Counties Rail. Co.* (1859), 7 C. B. (N.S.) 58; but in neither case is there any ruling to the effect that a point of law arising from the facts as stated may not be raised before the Divisional Court, notwithstanding it was not raised before the court of summary jurisdiction. The justices are bound to know the law and act upon it if they see any fatal objection. If they do not do so their decision is subject to review by the High Court on a case stated.

Appeal to quarter sessions abandoned.—In many cases the party aggrieved may appeal to quarter sessions, or by special case. If an appeal to quarter sessions is given by statute, this does not deprive the party aggrieved from applying to have a case stated (*Steele v. Brannan* (1872), L. R. 7 C. P. 261; 41 L. J. M. C. 85; 26 L. T. 509; 20 W. R. 607; *Muir v. Hore*, ante, p. 13; *Power v. Wigmore* (1872), L. R. 7 C. P. 386; 27 L. T. 148), and see the Irish case of *R. v. Waterford JJ.*, [1900] 2 I. R. 307. On the other hand, if a case is stated, then the party aggrieved is taken to have abandoned his right of appeal to quarter sessions finally and conclusively, and to all intents and purposes (Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 14). If,

however, an appeal lies to quarter sessions from a rate, and notice of appeal is actually given, this does not take away the right to appeal to the High Court on a special case, for by s. 11 of Baines' Act, 1849 (12 & 13 Vict. c. 45), it is enacted that at any time after notice given of appeal to any court of general or quarter sessions of the peace against any judgment, order, rate, or other matter (except an order in bastardy or a proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes or post office), for which the remedy is by such appeal, it shall be lawful for the parties by consent or by order of any judge of one of the superior courts of common law to state the facts of the case in the form of a special case for the opinion of such superior court, and to agree that a judgment in conformity with its decision and for such costs as such court shall adjudge, may be entered on motion by either party at the sessions next or next but one after the decision shall have been given; and the judgment is to have the same effect as if it had been given by court of general or quarter sessions upon an appeal duly entered and continued (i). The words *or other matters* mean other matters *ejusdem generis*, or the matters preceding it. See *R. v. James* (1786), 1 East, 303 n; *Sandiman v. Breach* (1827), 7 B. & C. 100; 9 D. & R. 796; 5 L. J. (o.s.) K. B. 298; 31 R. R. 169; *Kitchen v. Shaw* (1837), 1 N. & P. 791; 6 A. & E. 729; W. W. & D. 278; 7 L. J. M. C. 14; *Ex parte Strong* (1854),

(i) An appeal will lie to the Court of Appeal from the King's Bench Division upon a case stated under this section provided the matter be not criminal (*Corporation of Peterborough v. Overseers of Wiltshorpe* (1884), 12 Q. B. D. 1; *Holborn v. Chertsey* (1885), 15 Q. B. D. 76).

3 C. L. R. 76 (Bail Court) ; *Morant v. Taylor* (1876), 45 L. J. M. C. 78 ; 1 Ex. D. 188 ; 34 L. T. 139 ; 24 W. R. 461. Although the question has not yet been decided, the better opinion seems to be that a conviction is included in the words "judgment or order."

But if the party aggrieved appeals to the High Court by a special case, he is taken to have abandoned his right of appeal to quarter sessions finally and conclusively, and to all intents and purposes (Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 14). It is therefore a matter of importance to determine which form the appeal shall take. In many cases no appeal lies to quarter sessions, but an appeal lies to the High Court on a point of law. In such cases, there being no alternative appeal, the party aggrieved will, supposing he is so minded, ask for a special case.

Where an alternative appeal lies.—But, assuming that an appeal does lie to quarter sessions, and the magistrate or justices have decided in the view of the party aggrieved, erroneously in point of law or in excess of jurisdiction, shall the appeal be made to quarter sessions or by way of a special case ?

Quarter sessions may state case.—If the party aggrieved is disposed to appeal to the quarter sessions he may yet, in the event of the conviction, order or determination appealed against being confirmed, obtain from the court of quarter sessions a case on the point of law for the opinion of the High Court. But it must be borne in mind that the court of quarter sessions has a discretion in the matter, and the right to decide whether or not the case is one which is proper to be stated for the opinion of the High Court. The parties themselves are not entitled to ask for a case (*R. v. Chantrell* (1875),

L. R. 10 Q. B. 587, at pp. 588, 589 ; 44 L. J. M. C. 94 ; 33 L. T. 305 ; 23 W. R. 707). "Nothing can be better settled than that it is entirely at the discretion of the quarter sessions whether to grant a case and so to submit their judgment to the opinion of the court of Queen's Bench or not. Even though the appeal should be one in which, in the proper exercise of their discretion, they ought undoubtedly to grant a case, in order that their judgment may be reviewed, if they refuse to do so, there are no means of compelling them" (*R. v. Overseers of Walsall* (1878), 3 Q. B. D. 457, at p. 473) (*j*). In *R. v. Carnarvon JJ.* (1820), 4 B. & Ald. 86 ; 22 R. R. 636, it was held that if the quarter sessions decide upon an appeal, though erroneously, the Queen's Bench Division has no jurisdiction to review their judgment, except on a case sent up for its consideration ; and, therefore, when the sessions having heard the witness for the appellant, had refused to hear those for the respondent on the ground that their testimony had been prefaced by observations on the part of the advocate, and that he had rested his case on his argument as to the insufficiency of the case proved on the other side, the court refused to grant a *mandamus* to rehear the appeal. In that case BAILEY, J., said, "There is no instance, I believe, which can be found where the court have interfered by *mandamus* to direct the justices to rehear an appeal which they have once already heard. In this case they entered into the consideration of this appeal, and, after having heard it, they have decided that the respondent ought not to be

(*j*) The reversal of this decision by the House of Lords leaves this part of the judgment untouched. See *Overseers and Mayor of Walsall v. London and North Western Rail. Co.* (1878), 4 App. Cas. 30, at pp. 39, 40 ; 27 W. R. 189 ; 48 L. J. Q. B. 65 ; 39 L. T. 453 ; 43 J. P. 108.

allowed to call witnesses in reply. It is possible that in that decision they may have been wrong, but it seems to me that we are not at liberty to enter into that question, as no case has been sent up for our consideration. If we were to do so, we should constitute this court a court of appeal from the quarter sessions, and we should have applications continually made to us to overturn their determinations, on the ground of the improper reception or rejection of evidence, and be called upon to review their judgment although no case has been sent to us for that purpose. It is the duty of the sessions to hear and decide, and if they entertain any doubts to submit them to the court; but when they do not desire our interference we have no jurisdiction." *Per* HOLROYD, J., "If it had appeared in this case that the sessions had heard one side and had altogether refused to hear the other, I should have thought it the same as if the case had not been heard at all, and I should have been of opinion that the *mandamus* ought to issue."

The jurisdiction of the court of quarter sessions to state a case for the opinion of the High Court is derived by the terms of the commissioners of the peace, justices at quarter sessions being empowered and required to obtain the opinion of a judge of the High Court. This is now done after hearing the appeal at the quarter sessions by giving judgment subject to the opinion of the Queen's Bench Division on a special case stated.

The duties of justices in quarter sessions in regard to stating a case for the opinion of the High Court is discussed in the judgment of FIELD, J., in *R. v. Chantrell* (1875), L. R. 10 Q. B. 587, *ante*, p. 25. "The form of the commission of the peace which

gives the justices jurisdiction, and which appears never to have been altered from the first, contains the following proviso : ‘ Provided always that if a case of difficulty upon the determination of any of the premises, before you or any two or more of you, shall happen to arise, then let judgment in no wise be given thereupon before you or any two or more of you, unless in the presence of one of our justices of either bench, or of one of our justices appointed to hold the assizes in the aforesaid county.’ This not merely empowers but requires the justices in any case of difficulty to obtain the opinion of a judge, and by implication requires the judge to give his opinion. A practice seems to have arisen by which, instead of adjourning the sessions to the assizes, and then deciding the case which the justices thought one of difficulty in the presence of a judge of assize, the sessions stated the case in which they found difficulty, in writing, and decided it according to the opinion of the judge of assize given upon that case. This practice was resorted to as late as the year 1734, but it was probably attended by inconveniences, which led finally to its disuse in favour of the practice with which we are now familiar, of deciding the appeal conditionally and subject to the opinion of the court of Queen’s Bench upon any questions of law stated by the justices upon a case reserved by them. This is a summary of the history of a special case being stated by sessions. The court have not, in general, any jurisdiction to review the decision of the court of quarter sessions on any matter in which the court had jurisdiction. But there is an exception from that general rule in cases where the court of quarter sessions, on appeal, makes an order

either confirming or reversing the decision appealed against, subject to the opinion of the court, on some point of law reserved on a case stated by the sessions": *per* BLACKBURN, J., in *R. v. L. & N. W. Rail. Co.* (1874), L. R. 9 Q. B. 153; 43 L. J. M. C. 57; 29 L. T. 910; 22 W. R. 324.

Is a special case the proper mode of appeal?—The last question which arises for consideration is whether the proper remedy is an appeal by way of a special case rather than *prohibition*, *mandamus*, or *certiorari*. See *R. v. Longe et al* (1897), 66 L. J. Q. B. 278; *Southcombe v. Guardians of Yeovil*, [1897] 1 Q. B. 343; 66 L. J. Q. B. 294; 45 W. R. 318; 61 J. P. 230.

Certiorari, prohibition, mandamus.—We have already shown, *ante*, p. 12, that if the court decline jurisdiction and do not hear and determine the matter before it, there is no jurisdiction in the High Court to hear a special case. The remedy is to apply for a rule in the nature of a *mandamus* to compel the court of summary jurisdiction to hear and determine the case.

A further remedy is sometimes in a *certiorari*. It has been shown, *ante*, p. 1 n., that there may be an alternative remedy to a special case by removing the proceedings by writ of *certiorari* from the justices to the King's Bench Division for the purpose of being examined by that court, and, if necessary, quashed.

In *Pearce v. Bunting*, [1896] 2 Q. B. 360; 65 L. J. M. C. 131; 75 L. T. 184; 60 J. P. 695, *ante*, p. 2, a rule for a *certiorari* had been obtained and a special case stated. The arguments were heard together.

In *Palmer v. Thatcher* (1878), 3 Q. B. D. 346; 47 L. J. M. C. 54; 42 J. P. 213; 26 W. R. 314; 37 L. T. 784,

and *post*, p. 48, a case had been applied for, but five months were allowed to elapse before it was stated by the justices. The appellant had meanwhile applied for a *certiorari*, and on the argument of the case and the *certiorari* before the High Court the appeal was allowed, and the rule for the *certiorari* discharged without costs. COCKBURN, C.J., said, "With regard to the other question as to the *certiorari* having been applied for and the rule obtained, where there was this special case asked for, granted, and pending, I think that when it turns out that there is a case upon which judgment can be given in favour of the appellant we ought not to make the rule absolute for the *certiorari*. Nor is it necessary to enter into the question whether or not the magistrates had jurisdiction, with the view of determining whether the *certiorari* was taken away by the statute or not. I think in the exercise of our discretion, independent of the question of jurisdiction, we ought to say that the rule for the *certiorari* ought not to be made absolute."

In *R. v. Allen or Hodgson* (1864), 4 B. & S. 915 ; 33 L. J. M. C. 98 ; 10 Jur. (N.S.) 796 ; 9 L. T. 761 ; 12 W. R. 423, *ante*, p. 1, it was held that if the defendant's objection be one going to the root of the justices' jurisdiction, a *certiorari* may issue, although a special case has been stated.

In the recent case of *R. v. Thomas* (1901), 18 T. L. R. 71, it was held that if a defendant has applied for and obtained a special case, and thus taken the proper steps for getting a decision upon the points in dispute, there is no ground for the court, in the exercise of its discretion, to grant a *certiorari*.

The better opinion would seem to be that when a case has been obtained or when a case is the proper

remedy a *certiorari* should not be applied for unless the justices improperly delay to state a case which they have consented to grant, in which case the appellant would be justified in applying for a *certiorari*, assuming that the case is one where a *certiorari* is in other respects an appropriate remedy.

If one or more of the justices is sufficiently interested in the matter at issue to make it appear that he or they had a bias in the result of the proceedings, the conviction, order, or determination may be quashed, on the ground of want of jurisdiction, but it is necessary for the aggrieved party to raise the objection before the court of summary jurisdiction, otherwise he may be taken to have waived the objection (*R. v. Great Yarmouth JJ.* (1882), 8 Q. B. D. 525 ; 51 L. J. M. C. 39 ; 30 W. R. 460).

If the party aggrieved was not aware of the fact that one or more of the justices was disqualified, then this should be made clear by affidavit on the application for a *certiorari* (*R. v. Kent JJ.* (1880), 44 J. P. 298). But it is not well that justices should be supposed to give such assent by implication. See *R. v. Cambridgeshire JJ.* (1855), 3 W. R. 418 ; *R. v. Huntingtower or Richmond JJ.* (1860), 8 Cox C. C. 314 ; 8 W. R. 562 ; 2 L. T. 373 ; *R. v. Antrim JJ.*, [1895] 2 L. R. 603.

When the justices have improperly heard the matter a *mandamus* and not a *certiorari* is the remedy ; but where the justices have heard the matter, but one of them is interested, a *mandamus* is not the proper remedy, but a *certiorari* (*R. v. Kent JJ.*, *supra*).

When the court of summary jurisdiction has not yet heard and determined the matter, but if they did so they would be acting beyond the scope of their

jurisdiction, a writ of prohibition is the proper remedy. When the court of summary jurisdiction has jurisdiction, a mistaken exercise of that jurisdiction is no reason for prohibition, for such an erroneous judgment would properly be a matter for appeal by case or *certiorari*. A writ of prohibition may issue to control a court of criminal jurisdiction equally as a court exercising civil jurisdiction (*R. v. Herford* (1860), 3 El. & El. 115 ; 29 L. J. Q. B. 249).

In case one of the court is interested either pecuniarily or otherwise, the proper course would be to apply for a prohibition before the hearing and determination of the matter (*R. v. Farrant* (1887), 20 Q. B. D. 58 ; 52 J. P. 116 ; 57 L. J. M. C. 17 ; 57 L. T. 880 ; 36 W. R. 184 ; 52 J. P. 116).

The writ of prohibition is a writ issued to prevent an inferior court from entering upon or completing some matter over which it has no jurisdiction. And see *In re Elstone and Rose* (1868), L. R. 4 Q. B. 4 ; 3 B. & S. 509 ; 38 L. J. Q. B. 6 ; 19 L. T. 280 ; 17 W. R. 52 ; *Liverpool United Gas Co. v. Everton* (1871), L. R. 6 C. P. 414 ; 40 L. J. M. C. 104 ; *R. v. Bromley JJ.* (1890), 38 W. R. 253.

When the jurisdiction of justices depended upon a particular interpretation of a statutory offence under the Railways Clauses Act, and the justices adjourned the hearing of a summons for such an offence for the question as to their jurisdiction to be determined, an application for a writ of prohibition against the justices is a just and convenient mode of procedure (*R. v. Longe* (1897), 66 L. J. Q. B. 102, *ante*, p. 29).

“The first question is one of general importance in practice as to whether prohibition lies to justices. The general principle of prohibitions going to inferior

courts is by reason of their acting or being about to act contrary to legal principles" (*ibid.*, WRIGHT, J.).

Where an order of a court of summary jurisdiction is irregularly or improperly made there should be an appeal against the order and not against a conviction subsequently obtained for disobedience of the order. In *Southcombe v. Yeovil Guardians* (1897), 66 L. J. Q. B. 294, *ante*, p. 29, an order had been made by a court of summary jurisdiction that the defendant should have his child vaccinated. The summons upon which the order was made had been issued by a magistrate who did not sign the order. Afterwards the defendant was summoned for not obeying the order and a penalty imposed. On appeal by special case, WRIGHT, J., in dismissing the appeal, said that so long as the order remained unquashed its validity could not be impeached on proceedings taken to enforce the recovery of a penalty under it. If the order was bad it ought to have been brought up by *certiorari* or other proceeding to be quashed.

Mere want of form in an information laid under a statute, and to which no objection is taken, does not deprive the magistrates of jurisdiction to hear and determine the case, and hence any objection to the form of the indictment or information which it is desirable to take under the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 9, should be made at the time (*R. v. Bradley* (1894), 63 L. J. M. C. 184 ; 10 R. 183 ; 70 L. T. 379 ; 17 Cox C. C. 739 ; 58 J. P. 199).

R. v. Anglesey JJ., [1892] 2 Q. B. 29 ; 61 L. J. M. C. 143 ; 67 L. T. 322 ; 17 Cox C. C. 563 ; 56 J. P. 552, is some authority for saying that when quarter sessions have granted a case and this has been abandoned, such

abandonment does not prevent the appellant applying to the High Court for a *mandamus*.

An application for a *mandamus* can only be made by someone so far personally interested as to have a specific legal right to have the duty carried out which he asks to have enforced (*R. v. Lewisham Guardians*, [1897] 1 Q. B. 498 ; 66 L. J. Q. B. 403 ; 76 L. T. 324 ; 45 W. R. 346 ; 61 J. P. 151).

A distinction must be drawn between a mere mistake or irregularity in point of law, and a want or excess of jurisdiction. In *R. v. Lundie* (1862), 31 L. J. M. C. 157, 160 ; 8 Jur. (N.S.) 640 ; 5 L. T. 830 ; 10 W. R. 267, CROMPTON, J., said : " We must take care that we do not go too far and say that in every case in which the justices come to a wrong conclusion they act without jurisdiction. Their jurisdiction is to decide the law and the fact, and there may be an erroneous exercise of jurisdiction without an excess of it."

No writ of *certiorari* or other writ shall be required for the removal of any conviction, order, or other determination, in relation to which a case is stated under this Act, or otherwise for obtaining the determination of the Superior Court on such case under this Act (Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 10).

CHAPTER II.

THE PROCEEDINGS NECESSARY TO SECURE AN APPEAL.

Conditions precedent to right of appeal to High Court.—It is now to be taken that the party desiring to appeal to the High Court by way of a special case, is satisfied (1) that the order, conviction, determination, or other proceeding which is to be questioned, is that of a “court of summary jurisdiction”; (2) that he is, in fact, a “person aggrieved”; (3) that the court has “heard and determined” the case; (4) that the ground of appeal is a question of law; (5) that he is prepared to abandon his appeal, if such there be, to quarter sessions, and lastly, that the proper remedy is a case, rather than a *mandamus*, *certiorari*, or *prohibition*.

Necessary steps to bring matter before the High Court.—These points being disposed of, our next inquiry must be: What are the necessary steps to bring the matter before the Superior Court?

We have seen that the person aggrieved may apply to the court to state a special case setting forth the facts of the case, and the grounds on which the proceeding is questioned (*a*).

Summary Jurisdiction Acts of 1857 and 1879, practically one.—The two statutes conferring this right of

(*a*) 20 & 21 Vict. c. 43, s. 2; 42 & 43 Vict. c. 49, s. 33 (1); and *ante*, pp. 2 and 3.

appeal are now practically one, *post*, p. 41. By s. 33 (2) of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), it is provided that "the application shall be made and the case stated within such time and in such manner as may be from time to time directed by rules under this Act, and the case shall be heard and determined in manner prescribed by Rules of Court made in pursuance of the Supreme Court of Judicature Act, 1875, and the Acts amending the same ; and subject as aforesaid, the Act of the session of the twentieth and twenty-first years of the reign of her present Majesty, chapter forty-three, intituled 'An Act to improve the administration of the law, so far as respects summary proceedings before justices of the peace' (b), shall, so far as it is applicable, apply to any special case stated under this section, as if it were stated under that Act."

In the case of *Rochdale Building Society v. Mayor of Rochdale* (1887), 51. J. P. 134, the justices stated the case under the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), and MATTHEW, J., in giving judgment, said : "In this case, the first contention was that the justices had purported to state this case under 20 & 21 Vict. c. 43, which, it was said, they had no power to do ; but as they have since acquired such a power under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33, and as the contention before the justices was really one as to their jurisdiction, we think we may take for granted that the justices, if necessary, would have stated the case under all the powers which they then had, or amended the case in that respect."

It is clear from a perusal of the two statutes and the

above decision, that the two Acts should be taken as practically one, and that when there is an inconsistency, the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33, is to prevail. In this statute, a reference is made in s. 33 (2), to the procedure for obtaining a case. It is there provided that the application shall be made and the case stated within such time and in such manner, as may be from time to time directed by rules under this Act. Rule 18 of the Summary Jurisdiction Rules, 1886, requires that—

Application for special case to be made in seven days.—“An application to a court of summary jurisdiction under s. 33 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), to state a special case, shall be made in writing, and a copy left with the clerk of the court, and may be made at any time within seven clear days from the date of the proceeding to be questioned.”

Application to be served on justices, and copy left with clerk.—The clear meaning of this rule is that two processes are prescribed, the first being an application in writing to the justices, and next the leaving of a copy of this application with the clerk to the justices. The notice of application should be served on each of the justices who determined the case, by delivering it personally, or by leaving it at their place of residence. Unless these statutory conditions are complied with, the Superior Court has no jurisdiction to hear the appeal.

There are several decisions to this effect. In *South Staffordshire Waterworks Co. v. Stone* (1887), 19 Q. B. D. 168 ; 51 J. P. 662 ; 56 L. J. M. C. 122 ; 57 L. T. 368 ;

3 W. R. 76, an oral application was made to the justices sitting in court and granted. Afterwards, and within seven days, a notice of appeal was served on the clerk to the justices, but no application *in writing* was served on the magistrates. The Divisional Court held that the statutory conditions of appeal had not been complied with, and dismissed the appeal. This case was followed in *Great Northern and London and North Western Joint Committee v. Inett* (1877), 2 Q. B. D. 284; 41 J. P. 710; 25 W. R. 584; 46 L. J. M. C. 237; and *post*, p. 75; and *Lockhart v. St. Albans* (1888), 21 Q. B. D. 188; 36 W. R. 801; 57 L. J. 118; 52 J. P. 421. See *R. v. Bridge* (1890), 59 L. J. M. C. 49; 54 J. P. 629; 38 W. R. 464, *post*, pp. 46, 50.

R. v. Newton (1879), 43 J. P. 351, is a decision to the effect that the applicant is not bound, in demanding a case, to state that he is dissatisfied in point of law; it is enough if the facts show there was a point of law in dispute. This case, however, was decided before the Summary Jurisdiction Act of 1879 (42 & 43 Vict. c. 49), s. 33. The practice now is to state that the application is on the ground that the conviction, order, determination, or other proceeding is erroneous in point of law, or in excess of jurisdiction (*c*).

Each of the justices should be served.—It is necessary that each of the justices should be served, and a copy as well served upon their clerk. In *R. v. Knill* (1893), 57 J. P. 277, it was held that the copy of the notice of the application must be served on the justices' clerk within the seven days, as well as the original served upon the justices.

In *Westmore v. Paine*, [1891] 1 Q. B. 482; 60 L. J.

(c) See Appendix, Application to justices to state a case.

89 ; 39 W. R. 463 ; 55 J. P. 440 ; 64 L. T. 55, the appellant having been convicted by a court of summary jurisdiction consisting of five justices, made an application in writing for a case to two only of such justices, who stated and signed the case:—*Held*, that the appellant had not complied with the directions of the rules under s. 33 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and, notwithstanding the respondents were willing to waive the objection, that there was consequently no power to state the case. “The application must be made in writing to the court. It may no doubt be inconvenient to get the same members of the court together again. But the party desiring the case to be stated, might serve a written application for it on each member of the court, and so serve the court” (*ibid.*, POLLOCK, B.).

Case must be stated within three months.—The latter part of s. 18, Summary Jurisdiction Rules, 1886, provides that “the case shall be stated within three calendar months after the date of the application and after the recognizance shall have been entered into.”

In *Walker v. Delacombe* (1894), 63 L. J. M. C. 77 ; 58 J. P. 88, *post*, p. 61, the application to justices to state a case was made on September 21st, 1893. The case was not stated until December 20th following, and the appellant did not enter into his recognizance till December 21st:—*Held*, that there had been no compliance with r. 18 of the rules of 1886 under the Summary Jurisdiction Act, 1879.

Recognizances must be entered into before case delivered.—The rule says that the case shall be delivered *after* the recognizances have been entered into.

In *Walker v. Delacombe*, *supra*, the case was delivered by the magistrates' clerk to the appellant's solicitor before this was done, but on condition that it was not to be filed in the Crown Office until the recognizance was completed. Next day the recognizance was entered into and the case filed; but Lord COLERIDGE, C.J., considered that there had been no redelivery of the case so as to allow of its being delivered *after* the entering into of the recognizance. The delivery of the case the evening previous to the making of the recognizance was a breach of the rule, which requires the delivery of the case after the recognizance has been entered into. It is to be noted that in this case DAY, J., while not dissenting from the Lord Chief Justice, thought the court might hear the appeal.

Rules should be rigidly adhered to.—The above case may well serve as a warning that, to be on the safe side, the rules should be rigidly adhered to. In *Hughes v. Wavertree Local Board* (1894), 10 T. L. R. 357; 58 J. P. 654, CAVE, J., held that the latter part of r. 18 only applies to the acts required to be done by the appellant, and does not apply to the acts of the justices. So far as regards the latter, it is merely directory. In this case an application to strike out a case not stated, in consequence of illness of the justices' clerk, until nearly five months after the date of application for it, was refused, and the learned judge stated that if an application had been made for a *mandamus* it would not have been granted. In *Mayer v. Harding* (1867), L. R. 2 Q. B. 410; 9 B. & S. 27 n.; 16 L. T. 429; 15 W. R. 816, the appellant received the case from the justices on Good Friday, and transmitted it to the proper office on the following Wednesday. The

offices of the High Court having been closed from Friday until Wednesday, the court held that the appellant had transmitted the case as soon as it was possible to do so, and therefore had sufficiently complied with the requirements of the second section, which directs that the case shall be transmitted by the appellant within three days after he has received it.

From these cases two rules may be deduced : (1) that the requirements of the Summary Jurisdiction Rules, 1886, must be strictly adhered to, so far as regards the conduct of the parties themselves ; and (2) where the appellant has done all that it is practicable for him to do, he is not to lose his right of appeal.

This last rule, however, must not be taken to limit the principle that the parties themselves cannot extend the time by their own acts.

Under the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), the application for the case had to be made within three days from the decision to be appealed against. But now, according to the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33, the application can be made within seven clear days from the date of the proceeding to be questioned, and, as the two statutes are to be read together (*ante*, p. 36), the time within which an application for a special case is to be made is seven clear days (*ante*, p. 37).

Mode of reckoning time—first day exclusive, last day inclusive—Sundays.—The meaning of the term “seven clear days” is that the day upon which the conviction, order, determination, or other proceeding took place, is not to be counted, but the seventh day thereafter is. If, to take an instance, the conviction, etc., took place on a Saturday, Sunday would be the

first day in the reckoning, and the last day in which the application could be made would be the following Saturday. In this computation of time within which notice is to be given Sunday is reckoned. There are a number of decisions upon these points (*R. v. The Justices of Middlesex* (1843), 2 Dowl. (N.S.) 719 ; 12 L. J. M. C. 59 ; 7 Jur. 396).

In *Peacock v. R.* (1858), 4 C. B. (N.S.) 267 ; 27 L. J. C. P. 227 ; 6 W. R. 567, a case arising before the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), the hearing and determination by the justices took place on a Thursday, and the appellant did not apply to the justices until the following Monday :—*Held*, that when Sunday is one of the next three days after a determination, etc., the Sunday is to be counted as one of them, and when the last of such three (*d*) days falls on a Sunday, the Monday following is too late ; and it was held that the time, according to the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), within which the application must be made being three days from the date of the determination, etc., the superior court had no jurisdiction, the condition precedent to the right of appeal not having been complied with. This case was followed in *Woodhouse v. Woods and Others* (1859), 29 L. J. M. C. 149 ; 6 Jur. (N.S.) 421 ; 1 L. T. 59 ; *Brown v. Vickers* (Michas. 1859) ; and *Wynne v. Ronaldson* (1865), 12 L. T. 711 ; 13 W. R. 899.

The court will either accede or decline to state case.—We have now arrived at the stage when the application for a case has been duly made and served.

(*d*) Now seven days ; Summary Jurisdiction Act, 1879, *ante*, pp. 37, 41.

One of two things must then occur : either the court of summary jurisdiction will accede to the request to state a case, or decline to do so.

Court may decline to state case when application frivolous.—The Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 4, provides that “if the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on request of the appellant, sign and deliver to him a certificate of such refusal : Provided that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of her Majesty’s Attorney-General for England or Ireland, as the case may be.”

When justices refuse to state case a mandamus may lie.—“Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of King’s Bench, upon an affidavit of the facts, for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated (*e*) ; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet ; and the justice or justices, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into

(*e*) By r. 80 of the Crown Office Rules, 1886, it is provided that an application for an order in the nature of a *mandamus* to justices to state and sign a case shall be by motion for an order *nisi* (in the same manner as is provided in rule 60).

Rule 60 provides that application for a prerogative writ of *mandamus* shall, during the sittings, be made to a Divisional Court of the King’s Bench Division by motion for an order *nisi* ; and in the vacation to a judge in chambers for a summons to show cause, upon its being shown to the satisfaction of such judge that the matter is urgent.

such recognizance as is hereinbefore provided" (Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 5). This section and s. 4, *supra*, are the two sections of the Act of 1857 which provide for the contingency of the court of summary jurisdiction refusing to state a case upon application to do so. The two sections must be read in connection with s. 33 of the Act of the Summary Jurisdiction Act, 1879, the latter part of which provides that "if the court decline to state the case [the party aggrieved] may apply to the High Court of Justice for an order requiring the case to be stated."

Two points arise upon these three sections of the two statutes for consideration. First, the court of summary jurisdiction may, in the first instance, decline to state a case; and, secondly, in the event of its doing so, an application may be made to the High Court for an order to compel the inferior court to state the case.

Appeal lies on point of law only.—It has been pointed out already that the opinion of the High Court may only be asked on a question of law or where there has been an excess of jurisdiction, *ante*, p. 20, and see Ch. IV., *post*, p. 107, and it follows, therefore, that the court of summary jurisdiction should not state a case unless it be upon a point of law. Whether or not there is a point of law involved may very often be an open question, but unless the court is clearly of opinion that there is no point of law in the proceeding, it ought to state a case upon the application of the party aggrieved.

In *R. v. Yeomans* (1860), 1 L. T. (N.S.) 369; 24 J. P. 150, CROMPTON, J., said: "I think the magistrates would have acted improperly if they had stated a case, because there is nothing in the point except a

question of fact.” And *per* HILL, J. : “ The magistrate ought not to state a case unless it be upon a point of law ” (*Dyer v. Park* (1874), 38 J. P. 294 ; *Re Basingstoke School* (1877), 41 J. P. 118).

When point of law raised, justices must state case.—On the other hand, if a point of law be raised, the justices cannot refuse to state a case. They have no discretion in the matter. In the *West Ham* case, *Law Times*, September 28th, 1872, the magistrates, in declining to state a case, had given a certificate that upon an application to state a case they had in their discretion refused to do so. In granting a rule, QUAIN, J., said : “ The justices had no right to issue such a certificate. They had no discretion to exercise.” In *R. v. Watson and Others, Justices of Bradford* (1884), 48 J. P. 149, a schoolmaster had detained a child for not learning home lessons. The justices dismissed a charge of assault against the master, and refused to state a case :—*Held*, that this being a point of law as to the legality of the assault or detention, the justices were bound to state a case, and the rule was made absolute with costs against the justices.

In *R. v. Pollard* (1866), 14 L. T. (N.S.) 599 ; 37 J. P. 309, proceedings had been taken before justices by a local board against the owner of a house to abate a nuisance. The owner contended before the justices that the nuisance was caused by there being no sewer into which the drainage of the house could be conducted. The justices held that the existence of a sewer was a condition precedent to such an order being made, and dismissed the complaint, and refused to state a case. The court held that the justices were wrong, and ordered them to state a case.

When the question depends upon the justices' discretion, the decision cannot be erroneous in point of law (*Diss v. Aldrich* (1877), 2 Q. B. D. 179 ; 46 L. J. 183, *ante*, p. 17).

In *R. v. Bell*, 15 T. L. R. 487, the justices refused to state a case or to give a certificate that the application was frivolous. On the argument on a motion to make absolute a rule *nisi*, Mr. Justice RIDLEY said the rule must be made absolute with costs against the justices. Referring to 20 & 21 Vict. c. 43, s. 4, he said the section provided that if the justices be of opinion that the application is merely frivolous, but not otherwise, they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal. The words were clear that unless the application was in their opinion frivolous, the justices must state a case on application.

In *R. v. Bridge* (1890), 24 Q. B. D. 609; 59 L. J. M. C. 49; 54 J. P. 629; 38 W. R. 464, *ante*, p. 38, and *post*, p. 50, a police magistrate, acting under the Metropolis Management Act, 1855, s. 129 (*f*), decided that certain ashes from the furnaces of an hotel were not "refuse of trade" within the section, and declined to state a case on the ground that the decision was "final and conclusive," and no point of law arose. Section 129 provided that if any dispute arose between the owner or occupier of a house or land and the scavengers required to remove certain refuse, it should be lawful for two justices to determine whether the subject matter of dispute was or was not refuse of trade manufacture or business and in every such case the decision of such justices should

(*f*) Since repealed by 54 & 55 Vict. c. 76, s. 142.

be final and conclusive. The Metropolis Management Act was passed prior to the Summary Jurisdiction Acts, 1857 and 1879, and the question the court had to decide was whether these Acts practically repealed so much of s. 129 of the Metropolis Management Act as made the decision of the justices or the metropolitan magistrate final and without appeal. The divisional court held that they did, consequently the magistrate must state a case, a point of law being raised as to the meaning of "trade refuse."

In *R. v. Rutlandshire JJ.* (1866), 13 L. T. 722, a rule to show cause why a *mandamus* should not issue calling on justices to state a case was discharged, the court holding that there were no facts disclosed at the hearing on which the justices could raise a point for the consideration of the court. See also *Green v. Pensam* (1858), 22 J. P. 737 ; *R. v. Brennan* (1854), 6 Cox C.C. 381 (*g*).

Improper reception of evidence.—The improper reception of evidence is not in every case a sufficient ground for justices to state a case. In *R. v. Macclesfield* (1860), 2 L. T. (N.S.) 352, a rule was refused because it appeared from the affidavits that there was other admissible evidence before the justices to support their finding. If, however, the evidence admitted was the only evidence on some essential point, it is submitted that the court would order a case to be stated (see *post*, p. 114).

These cases are, so far as they go, a guide as to when

(*g*) From a recent decision, *R. v. Mead*, [1902] 2 K. B. 212 ; 18 T. L. R. 544, it would seem that when the High Court has all the materials before it, the case may be finally disposed of on an application for a *mandamus* to state a case.

a court of summary jurisdiction ought, and when it ought not, to state a case on the application of a party aggrieved by its determination. There is, however, another contingency.

Delay in stating case ground for certiorari.—The court may so delay the delivery of a case that the appellant may consider his right of appeal in jeopardy.

In *Palmer v. Thatcher* (1878), *ante*, p. 29, a case had been applied for, but five months were allowed to elapse before it was stated by the justices. The appellant had meanwhile applied for a *certiorari*. In giving judgment for the appellant on the case, COCKBURN, C.J., declined to make the rule for the *certiorari* absolute, but discharged the rule without costs, one of the reasons given by the learned judge being the delay on the part of the court of summary jurisdiction in stating the case.

In *Hughes v. The Wavertree Local Board* (1894), 10 T. L. R. 357; 58 J. P. 654, an application was made by the respondents to have the special case stated by the justices struck out, on the ground that it was not stated within the proper time. It appeared that the delay was owing to the clerk to the justices being away on business at one time, and afterwards being indisposed. The court refused the application to strike the case out, and Mr. Justice CAVE, in delivering the judgment of the court, said: "The application was to strike out a case stated by magistrates under the Rules of the Act of 1879. The rule in question provides that on an application to the court of summary jurisdiction under that Act at any time within seven clear days, a case shall be stated in three months after the date of the application, and after the recognizances are entered into. It is contended that the whole of the rule is a condition

precedent, and that it is not merely directory. It may be so as far as it relates to acts to be done by the appellant, but not so far as it relates to the magistrates, as to their acts it is only directory. The appellant cannot compel the magistrates to state a case, he can only do his best. No doubt he is only to use due diligence ; and if we could see that he had delayed the matter with any indirect motive, or that by lapse of time the proceedings might be defeated, we should be disposed to visit him with the consequences. But here it appears that the party appealing had always been ready to concur in a statement of the case. . . . Obviously no fault can be found with the appellant for the delay. He could not anticipate that the clerk of the justices would be away from business, and if he had applied for a *mandamus*, it must have been refused."

From these two cases we may deduce the following rules :

(1.) **Application for both case and certiorari generally irregular.**—That it is an unnecessary proceeding under ordinary circumstances to apply both for a *certiorari* and a special case, the penalty for which will almost certainly be the visitation of costs, even to a successful appellant. But see *Pearce v. Bunting* (1896), 65 L. J. M. C. 131, *ante*, Chap. I., p. 2, n.

(2.) **Time a condition precedent.**—That the time within which a case must be stated under the Summary Jurisdiction Rules, 1886, is a condition precedent so far as the appellant is concerned, but merely directory as regards the justices, *ante*, p. 40.

(3.) When application for mandamus refused.—

That an application for an order in the nature of a *mandamus* to state a case would be refused unless (1) the court had declined to state a case, or (2) had delayed for an unreasonable time to do so, without any reasonable excuse, to the detriment of the appellant.

With regard to the first part of the third of these rules, the further question arises, Has the court in effect declined to state a case? Suppose an oral application was made in open court for a case and declined, would that be a sufficient application to enable the appellant to go at once to the High Court for a *mandamus*?

The case of *R. v. Bridge* (1890), 59 L. J. M. C. 49 ; 54 J. P. 629 ; 60 L. J. M. C. 37 ; 38 W. R. 464, *ante*, pp. 36, 48, and *post*, p. 108, is an authority for the proposition that if the court of summary jurisdiction, on an application in open court for a case to be stated, refuse such application, that a *mandamus* may thereupon be applied for without service of a written application on the justices and a copy on their clerk. In this case, however, it would appear from the Law Journal Report that this point in the case was decided upon r. 17 of the Summary Jurisdiction Rules, 1880. But since 1880 further rules have been issued, namely the Summary Jurisdiction Rules 1886, which annul the earlier rules.

Rule 18 of the 1886 Rules provides that an application to a court of summary jurisdiction under s. 33 of the Summary Jurisdiction Act, 1879, to state a special case, shall be made in writing, *and a copy left with the clerk of the court*. *R. v. Bridge* was decided in 1890, and after the rules of 1886 had come into force. It does not appear that the attention of the court was called to r. 18, and the point appears to have been

decided on the superseded rules of 1880. It would, therefore be unsafe to rely upon this case as an authority for the proposition that when a verbal application has been made for a case and refused, it is unnecessary to serve a written application before applying to the High Court for a *mandamus*.

Rule 18 of the 1886 Rules requires a copy of the application for a case to be served upon the justices' clerk. How can this "copy" be served unless there has been service of an original upon the justices? It is submitted that *R. v. Bridge* cannot, with regard to this point, be relied upon. The rules of 1886, however, are under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and r. 18 and also r. 17 of the superseded rules of 1880, refer to an application to a court of summary jurisdiction under s. 33 of the Act of 1879. Hence if an application is made for a case under s. 2 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), which does not require a copy of the application for a case to be served on the clerk, it might be argued that the proposition "that if the court of summary jurisdiction on an application in open court for a case to be stated refuse such application, that a *mandamus* may thereupon be applied for without service of a written application on the justices and a copy thereof upon their clerk" is good law. But *R. v. Bridge* did not come within the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43). It was only by applying the Act of 1879 (42 & 43 Vict. c. 49), s. 33, that a case could be stated at all. It is clear, therefore, that, as has before been pointed out, *ante*, p. 36, the two statutes must be read together. Both require an application to be made in writing, and now by the Summary

52 PROCEEDINGS NECESSARY TO SECURE APPEAL.

Jurisdiction Rules of 1886, which must be taken to be part of the Summary Jurisdiction Act of 1879 (42 & 43 Vict. c. 49), not only must the application be made in writing, but a copy of such application must be served on the clerk. In all applications to the court for a case, the application must be in writing, and a copy thereof served upon the magistrates' clerk, notwithstanding that a verbal application has already been made in open court for a case and refused.

In an unreported case in the Queen's Bench Division, January 26th, 1891, noted in Trotter on Appeals, 2nd ed., p. 96, the Divisional Court (CAVE and VAUGHAN WILLIAMS, JJ.) upheld the objection that a copy had not been left with the clerk of the court, and discharged the rule calling on the magistrate to state a case ; and see also s. 11 of 20 & 21 Vict. c. 43.

Certificate of refusal to state case.—But before proceeding to the next stage, it may be well to note the method by which the assent or refusal of the court of summary jurisdiction to state a case is made to appear. By s. 4 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), it is provided that “if the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal” ; and by s. 33 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a

special case, setting forth the facts of the case and the grounds on which the proceeding is questioned, *and if the court decline to state the case*, may, etc.

Under both sections the court of summary jurisdiction is required to state a case or decline to do so. In cases where the appellant has been ordered to undergo a term of imprisonment it is of the greatest importance that the application for a case be acceded to or refused at once in order that further proceedings may be taken to enable the appellant to be released from custody. In practice there is little or no difficulty in obtaining the decision. If the court refuse a case on the ground that they consider the application frivolous under s. 4 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), the appellant is entitled to a certificate to that effect, and the appellant may thereupon apply for a *mandamus*. If the justices refuse to state a case, and also refuse a certificate, they would probably have to pay the costs of an application to the court for a rule to compel them to do so (*R. v. Bell and Others, Ex parte Flenn & Sons* (1899), 15 T. L. R. 487, *ante*, p. 46, and *post*, p. 138). It is not sufficient for them to certify that they have refused the request "in their discretion." They must state in the words of the section that they deem the application to be frivolous ; probably they should add, if it be the case, that their decision was one on fact alone. No provision is made under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33, for a certificate of refusal, but an intimation either by the clerk to the justices or by the court itself would be sufficient ground for an affidavit in support of an application to the High Court for an order in the nature of a *mandamus*. In the almost inconceivable event of a court of summary

jurisdiction refusing either to grant or decline the application for a case, the remedy by *certiorari* or *mandamus* may be resorted to.

High Court has discretion in granting or refusing rule.—Another matter for the appellant to consider before applying for a *mandamus* is whether the matter is one of sufficient importance to warrant the application. It must be remembered that under s. 5 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), the High Court has full discretion to determine whether it is proper to order the justices to state a special case. Therefore, if the justices acquit in a case in which they ought to inflict a merely nominal penalty, the High Court is not compelled to order them to state a special case (*R. v. Davey and Others*, [1899] 2 Q. B. 301 ; 68 L. J. Q. B. 675 ; 63 J. P. 515 ; 43 Sol. J. 478 ; 80 L. T. 798). If, however, there has been a wrongful conviction there is no such discretion, or, at least, it will not be exercised.

If, however, the case is of sufficient importance to warrant an application for an order in the nature of a *mandamus*, the next question to be considered is how the order is to be obtained.

How rule to state case obtained.—By r. 80 of the Crown Office Rules, 1886, it is provided that an application for an order in the nature of a *mandamus* to justices, or to a county court judge, or to justices to state and sign a case shall be by motion for an order *nisi* (in the same manner as is provided in r. 60), and by r. 60 it is provided that an application for a prerogative writ of *mandamus* shall, during the sittings, be made to a Divisional Court of the Queen's Bench Division by motion for an order *nisi* ; and in the

vacation to a judge in chambers for a summons to show cause, upon its being shown to the satisfaction of such judge that the matter is urgent. Provided that this rule shall not apply to any application for a writ of *mandamus* under 45 & 46 Vict. c. 50, s. 225.

Application for rule made to Divisional Court.—

The application for an order in the nature of a *mandamus* must be made to the Divisional Court of the King's Bench Division. By s. 8 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), a judge in chambers can order a case to be stated. The words of the section are as follows: "The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this Act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time."

But r. 80 of the Crown Office Rules, *ante*, p. 54, requires the application for an order to state a case to be made to a Divisional Court of the King's Bench Division by motion for an order *nisi*; and in the vacation to a judge in chambers for a summons to show cause, upon its being shown to the satisfaction of such judge that the matter is urgent (*h*).

Judge in chambers may order case to be stated.—

It follows, therefore, that a judge in chambers cannot order a case to be stated except in vacation, and then only where the matter is urgent, where, for instance, a term of imprisonment would have expired before a

(*h*) Unless the Court or a Judge give special leave to the contrary there shall be two clear days between the service of a notice of motion and the day named in the notice for hearing it (C. O. R. 251).

rule could have been obtained in the ordinary way, and that the application for an order must in term be made to the Divisional Court.

In Short and Mellor's Crown Office Practice, at p. 474, it is pointed out that the affidavits in support of the application for a rule in the nature of a *mandamus* should refer to the certificate or set it out verbatim (*i*).

If the application for a rule *nisi* be refused then, if the matter is not a criminal one, a further application may be made to the Court of Appeal *ex parte* within four days or within such further time as a judge of the King's Bench Division or the Court of Appeal may allow. See Order 58 of the Rules of the Supreme Court, r. 10. If the rule *nisi* be granted, then the justices may, upon the argument, brief counsel to appear in support of their refusal to state a case, or they may file an affidavit under the Review of Justices Decisions Act, 1872 (35 & 36 Vict. c. 26), or they may elect to take no part in the proceeding.

Review of Justices Decisions Act.—Section 2 of the Review of Justices Decisions Act, 1872 (35 & 36 Vict. c. 26), is as follows : “ Whenever the decision of any justice or justices is called in question in any superior court of common law by a rule to show cause or other process issued upon an *ex parte* application, it shall be lawful for any such justice to make and file in such court an affidavit setting forth the grounds of the decision so brought under review, and any facts which he may

(*i*) If the Court sees that some point of law is involved, it will order a case to be stated even though neither party raised such point before the justices, for the justices are supposed to know the law which they administer, and it is their duty to raise and consider any legal point, though overlooked by the parties (*Ex parte Markham*, *ante*, p. 22, and *post*, p. 130).

consider to have a material bearing upon the question at issue, without being required to pay any fee in respect of filing such affidavit or any stamp duty thereupon, and such affidavit may be forwarded by post to one of the masters of the court for the purpose of being filed."

And by s. 3 it is provided that "Whenever any such affidavit has been filed as aforesaid, the court shall, before making the rule absolute against the justice or justices, or otherwise determining the matter so as to overrule or set aside the acts or decisions of the justice or justices to which the application relates, take into consideration the matters set forth in such affidavit, notwithstanding that no counsel appear on behalf of the said justices."

The appellant has now arrived at a point when he has either obtained the assent of the court of summary jurisdiction to state a case or obtained an order in the nature of a *mandamus* from the High Court calling on the inferior court to state a case.

There yet remains one further step to be taken before the case can be stated and delivered to the appellant, namely, the entering into recognizances for the prosecution of the appeal.

Recognizance.—Section 3 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), requires the appellant at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, in every instance to enter into a recognizance, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as the justice or justices shall seem

meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same, and the appellant shall at the same time and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees, except such as are already provided for by law, shall be, according to the schedule to this Act annexed, marked (A), until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute 11 & 12 Vict. c. 43, s. 30 (*j*), and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or if that is impracticable, before some other justice or justices exercising the same jurisdiction, who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the judgment appealed against be reversed.

Enforcing recognizance.—Section 13 of the Summary Jurisdiction Act, 1857, provides for the enforcing of recognizances. It is as follows: “In all cases where the conditions, or any of them, in the said recognizance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices, shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed, and transmit

(*j*) Repealed as to justices' clerk's fee by 40 & 41 Vict. c. 43, s. 8, and see *post*, p. 140.

the same to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances forfeited at quarter sessions may now, by law, be enforced ; and such certificate shall be deemed sufficient *primâ facie* evidence of the said recognizance having been forfeited ; Provided, that where any such recognizance shall have been taken in England before a magistrate of the police courts of the metropolis, or by any stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied, upon such recognizance being forfeited, and on non-payment thereof, together with the costs of the proceedings to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of the Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 47), and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this Act, in as ample a manner as if they had been herein re-enacted and made part of the same."

Case must be stated within three months.—The latter part of rule 18, Summary Jurisdiction Rules, 1886, requires that the case shall be stated within three calendar months after the date of the application, and after the recognizance shall be entered into (*k*).

(*k*) Whether or not a proper application for a case has been made is not for the justices to decide ; that is a matter for the High Court ; and if after the application for the case the appellant apply to enter into his recognizances, the court must

Taking s. 2 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43) and rule 18 together, we find that a recognizance must be entered into between the application for and the stating of the case. The words of the Summary Jurisdiction Act, 1857, require the recognizance to be entered into at the time of making the application, and before the case is stated and delivered by the justices. The construction put upon these words by the court in *Chapman v. Robinson* (1859), 28 L. J. M. C. 30 ; 1 El. & Bl. 25 ; 5 Jur. (N.S.) 434, was that the recognizance was in time if entered into within the time limited for making the application for the case, namely, three days, and in *Stanhope v. Thorsby* (1866), L. R. 1 C. P. 423 ; 35 L. J. M. C. 182 ; 12 Jur. (N.S.) 374 ; 14 L. T. 332 ; 14 W. R. 651 ; 1 H. & R. 459, the court held that it is sufficient if the recognizances are entered into between the time of making the application for a case and the stating and delivering of such case.

On an appeal from a court of summary jurisdiction to a court of quarter sessions the appellant first entered into recognizances and then served notice of appeal, instead of entering into recognizances after giving notice of appeal. The justices having dismissed the appeal as irregular, the High Court, on an application for a *mandamus*, held that the quarter sessions had

allow of this being done. In the case of *In re Carter and the Mayor of Hastings* (1855), 24 L. J. M. C. 72, a party against whom an order of affiliation had been made applied to a justice, stating that he had given notice of appeal and required the justice to take his recognizances to appear and try the appeal, and to pay costs if awarded, and it was held that the justice had no jurisdiction to decide whether the notice of appeal was sufficient, for that was a question for the sessions on hearing the appeal.

acted properly (*R. v. Cheshire JJ.* (1896), 60 J. P. 585).

Notice of appeal should have been given before settling the recognizances and the amount (*R. v. Anglesey JJ.*, [1892] 2 Q. B. 29 ; 56 J. P. 552, *ante*, p. 33).

Rigid adherence to Act necessary.—These last two cases are under s. 31 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and refer to appeals to quarter sessions. They are none the less a guide as to the construction of the other section of the same Act referring to appeals by special case. It is clear that the courts require a rigid adherence to the words of the Act, and when a certain order in time for doing anything is prescribed, that order must be followed.

When recognizance may be entered into.—Rule 18 requires the case to be delivered by the justices within three months from the date of the application for it, so it follows since the decision in *Stanhope v. Thorsby*, *supra*, that the recognizance may be entered into any time within the three months following the application, but so that they are entered into before the case is stated or delivered. It follows, therefore, that the time within which recognizances *may* be entered into, is three months from the application for the case, but this time, namely, three months, may be shortened by the case being delivered by the justices to the appellant within a few days from the application, and as the recognizances must be entered into *before* the case is delivered, the three months within which recognizances

may possibly be extended by the non-delivery of the case, may be in effect shortened to a few days by the speedy delivery of the case.

This being so, the appellant, so soon as he has ascertained that the court agrees to state the case, should take steps at once to enter into his recognizances.

Amount of recognizance to be fixed by court of summary jurisdiction.—The court of summary jurisdiction, in the first place, will fix the amount of the recognizances, and decide whether or not the appellant must find a surety or sureties to join with him, and in what amount such sureties shall each be bound. This having been done, the recognizances may be entered into at some other place. They need not be entered into before the court of summary jurisdiction from which the appellant is desirous of appealing. By s. 23 (1) of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), it is provided that : “ A person shall give security under this Act, whether as principal or surety, either by the deposit of money with the clerk of the court, or by an oral or written acknowledgment of the undertaking or condition by which and of the sum for which he is bound, in such manner and form as may be for the time being directed by any rule made in pursuance of this Act, and evidence of such security may be provided by entry thereof in the register under this Act of proceedings of a court of summary jurisdiction or otherwise as may be directed by such rule.”

Section 42 of the same Act provides that : “ When a court of summary jurisdiction has fixed, as respects any recognizance, the amount in which the principal and

the sureties (if any) are to be bound, the recognizance, notwithstanding anything in this or any other Act, need not be entered into before such court, but may, subject to any rules made in pursuance of this Act, be entered into by the parties before any other court of summary jurisdiction or before any clerk of a court of summary jurisdiction, or before a superintendent or inspector of police or other officer of police of equal or superior rank or in charge of any police station, or where any of the parties is in prison, before the governor or other keeper of such prison ; and thereupon all the consequences of law shall ensue, and the provisions of this Act with respect to recognizances taken before a court of summary jurisdiction shall apply, as if the recognizance had been entered into before the said court as heretofore by law required" (*m*).

And by Rule 13, Summary Jurisdiction Rules, 1886 : "Where a court of summary jurisdiction has fixed as respects any recognizance, the amount in which a principal and a surety or sureties are to be bound, the governor of a prison shall not be required to take the recognizance of any person proposed as surety, unless the person proposed produces a certificate in writing from a court of summary jurisdiction, or a clerk thereof, that he has satisfied the court or clerk of his ability to pay the amount for which he is bound, in the event of the recognizance becoming forfeited."

And by Rule 14 : "Any security given under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49),

(*m*) This is not confined to cases where defendant is bound over to keep the peace, but applies to every case in which a court of summary jurisdiction has power to order a defendant to be committed in default of finding sureties.

by an oral or written acknowledgement, shall be in the form of an undertaking, and may be in the appropriate form in Part I. or Part II. of the schedule hereto, or in any other form to the like effect."

These various rules and sections of the Summary Jurisdiction Acts, require that the appellant shall within a certain time [not earlier than his application for a case to be stated, and before the actual stating or delivery of the case to him] enter into recognizances, the amount of which is to be fixed by the court stating the case, which court will also fix the number of sureties, if any. The recognizances may be entered into before any other court of summary jurisdiction, and this done the appellant can obtain his liberty if in custody, and proceed with his appeal.

The recognizance into which any person appealing from the conviction or order of a court of summary jurisdiction to a court of quarter sessions is required to enter by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31 (3), need not be entered into before the court by which the conviction or order was made, nor before a court of summary jurisdiction acting for the same county, borough, or place, but may be entered into before any court of summary jurisdiction (*R. v. Durham JJ.*, [1895] 1 Q. B. 801; 43 W. R. 423; 64 L. J. M. C. 187; 59 J. P. 264; 72 L. T. 465).

When inhabitants, etc., and other large *quasi* corporate bodies are required to give recognizances, and it is impracticable for the whole body to enter into the recognizances, it is the practice to allow one member of the body, on behalf of himself and the rest of the body, to acknowledge with such sureties as may be required.

There is authority to show that a corporate body cannot enter into a recognizance unless, indeed, it be by power of attorney ; but in such cases also it is the practice to allow such bodies to enter into recognizances in the manner above stated, *i.e.*, by one member of the corporation on behalf of himself and the other members (*n*).

The recognizance may be entered into by an infant (*Ex parte Williams* (1824), M'Clel. 493).

The stating of the case.—The recognizances having now been completed, the court of summary jurisdiction can state and deliver the case.

According to the Summary Jurisdiction Acts, 1857 (20 & 21 Vict. c. 43) and 1879 (42 & 43 Vict. c. 49), the court states the case. In practice, however, either the appellant's solicitor draws up the case and submits it for signature to the justices, who make any alteration they may think desirable, or it is drawn up by the clerk of the court and settled by the counsel or solicitors of the respective parties.

The respondent must be "the other party," *i.e.*, the prosecutor, or person who set in motion the proceedings before the magistrate, or the defendant, as the case may be (*R. v. Hants JJ.* (1830), 1 B. & Ad. 654 ; *R. v. Goodall* (1874), L. R. 9 Q. B. 557).

The form of the case.—Rule 142 of the Crown Office Rules, 1886, requires that every case shall be divided into paragraphs, which as nearly as may be shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively.

(*n*) It is doubtful whether a married woman can enter into a binding recognizance, but in such a case it is probable that this condition precedent would be excused, owing to the impossibility of its performance.

The taxing officer shall not allow the costs of drawing and copying any special case not substantially complying with this rule without the special order of the court.

Care should be taken to state facts, and not merely evidence from which facts are to be inferred.

In *Bischof v. Toler* (1895), 65 L. J. M. C. 4 ; 44 W. R. 189 ; 59 J. P. 807 ; 73 L. T. 402, Lord RUSSELL, C.J., said : " I wish to add that the form in which this case is presented to the court is not the correct form. The learned magistrate has apparently dictated to his clerk a copy of the notes of the evidence, and then at the end has stated his own conclusion upon the issue involved. That is not the correct form in which to present a case. The magistrate is bound to state, not the evidence given before him, but the facts which he finds to have been proved before him."

The facts should, therefore, be stated simply and clearly, and not merely the evidence from which the facts are to be inferred.

What case should contain.—The special case should contain every question which it is desired to submit for the opinion of the court, lest, in consequence of the omission to state a question, the court should decline to entertain the point.

" There was another question on which we were requested to give our opinion. It was not submitted to us by the magistrates, and therefore we have no power to comply with the request that has been made to us" : *per* WILLIAMS, J., in *Overseers of St. James' v. Overseers of St. Mary's, Battersea* (1859), 6 C. B. (N.S.) 878 ; 29 L. J. M. C. 26 ; 6 Jur. (N.S.) 100.

Upon the argument of an appeal from justices, no point

can be urged which was not taken before them (*Hill v. Hunt* (1854), 15 C. B. 1 ; *Motteram v. Eastern Counties Rail. Co.* (1859), 7 C. B. (N.S.) 58, *ante*, p. 23 ; *Purkis v. Huxtable* (1859), 1 E. & E. 780 ; 28 L. J. M. C. 221 ; 5 Jur. (N.S.) 790, *ante*, pp. 21, 22 ; *Buckmaster v. Reynolds* (1862), 13 C. B. (N.S.) 63 ; *Marshall v. Smith* (1873), L. R. 8 C. P. 416 ; 42 L. J. M. C. 108 ; 28 L. T. 538 ; but see next paragraph).

Amendment of case.—The court will not allow a special case to be amended by raising a point which the parties have not raised for their consideration (*Hill v. Hunt* (1854), 15 C. B. 1, *supra*).

The court can, however, as we have already shown, *ante*, p. 22, determine any question of law arising on a case, notwithstanding that the question was not raised before nor reserved by the justices, provided that the question does not depend on further evidence which might have been called before the justices. See *Knight v. Halliwell*, *ante*, p. 22.

Every point of law to be inserted in case.—It is of the very greatest importance to the appellant that every point of law he desires to raise should be inserted in the case in the form of a question for the High Court. We have seen that only such points of law as were raised before the court of summary jurisdiction can be argued in the High Court, unless they were of such a nature that no further evidence could alter them. The case should contain a request for the opinion of the High Court upon all questions of law that were (1) raised on the hearing before the court of summary jurisdiction, or (2) are inherent in the case from the nature of the facts which it contains.

The High Court, as we have seen from the rule laid down in *Knight v. Halliwell*, *ante*, p. 22, can deal with points of law not raised before the court of summary jurisdiction, provided that they are of a certain nature, and when such points are not specifically raised in the case, may yet be dealt with by the High Court ; but none the less, it is advisable, when the magistrates will agree, that every point of law which the appellant desires to raise before the High Court should be inserted in the case in the form of a question.

Justices decide what are the facts in the case.—So far as the facts are concerned, the justices must decide them, and no question should be raised respecting the facts except only so far as they raise a point of law (*Bellasco v. Hannant* (1862), 31 L. J. M. C. 228). The justices, are, moreover, the judges as to what facts were in dispute at the hearing, and in case of a disagreement in the settling of the case, the justices must decide what facts were raised on the hearing before them.

Dispute as to facts before inferior court.—The case of *Musther v. Musther*, *Times*, January 17th, 1894, 58 J. P. 53, raised the question of procedure when on a case stated by justices one of the parties disputed the facts on the case as stated, and declared that they were different, and that they raised a different question. The court held that very great inconvenience would result if they were to go behind the case as stated by the magistrates. They must rely on the magistrates, and take the case as they had stated it, and decide upon it unless there was a patent defect in it—patent upon the face of it, which prevented them from so deciding upon it. See *Yorkshire Tire and Axle Co. v.*

Rotherham Local Board of Health (1858), 4 C. B. (N.S.) 362 ; 27 L. J. C. P. 235 ; 6 W. R. 443.

It must not, however, be assumed that in case of dispute as to what facts were before the court of summary jurisdiction at the hearing, there can be no appeal from the decision of the justices as to what shall and what shall not be inserted in the special case. The High Court has power over its own proceedings, and can, if it thinks desirable, send the case back to the justices for amendment.

By s. 7 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), it is provided that "the court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment ; and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended."

In the *Yorkshire Tire and Axle Co. v. Rotherham Local Board of Health* (1858), 4 C. B. (N.S.) 362 ; 27 L. J. C. P. 235 ; 6 W. R. 443, a rule was applied for under s. 7 to show cause why the case should not be sent back to the justices in order that the evidence and proceedings at the hearing might be more fully stated. The appellant contended that a certain order in evidence before the justices was not set out in the case. The respondent disputed whether the order referred to was in evidence, and the court gave leave for affidavits to be made by both parties as to the fact in dispute.

It will be noticed that in this case the High Court did not interfere with the determination of the magistrates on the hearing of the case before them. All that it did was to exercise the power of amendment given it by s. 7 of the Summary Jurisdiction Act,

1857, and this power of amendment was held to include the decision as to what facts really were in dispute before the justices.

In *Unkles v. Attorney-General* (1873), Ir. R. 7 C. L. 462, the justices having, in a case stated by them, omitted inadvertently to set out some documentary evidence which was shown to have been read before them, the court on motion previously to the argument sent the case back to them to be amended, although no application had been made to the justices to amend.

Taking the two decisions, *Musther v. Musther* (1894), and *Yorkshire Tire and Axle Co. v. Rotherham* (1858), together, there is apparent conflict. A close study of the cases, however, makes the apparent conflict disappear, and leaves a clear rule for our guidance. In the former case, which was one of desertion by a husband, the magistrates on the evidence found desertion as a fact.

It was contended that the case as stated did not really give the effect of the evidence nor raise the question intended to be raised. The parties had, in fact, voluntarily separated, and there were negotiations between them for such a separation, to prove which the appellant had affidavits, and it was further contended that the court had jurisdiction to look at the affidavits to show this, and send the case back to be restated. This contention, however, amounted to no more than this, that it was desired to contradict the findings of the magistrate. The issue at the trial was whether or not the husband had deserted his wife. The magistrates found, as a fact, that he had, and so long as there was evidence upon which the court of summary jurisdiction could find desertion, the High Court would not interfere. The High Court will not weigh the evidence that is for the court before which the hearing takes place, and

so long as there is sufficient evidence upon which the court can find the fact, the High Court will not interfere. In the Yorkshire case there was no dispute as to the findings of the magistrates ; the question was whether a document, which was omitted in the case, had been in evidence before them. The High Court being satisfied that the document was a material one, and had been in evidence, sent the case back for amendment. The rule we may extract from these cases is this, that when a fact has been omitted in the case which was before the magistrates at the hearing, the High Court may order the case to be amended by its insertion. If the magistrates deny that the fact was raised before them, then the case must be taken as stated by them.

When application for amendment of case should be made.—In *Yorkshire Tire and Axle Co. v. Rotherham*, WILLES, J., said : “ As a general rule the application to have the case amended should be made when the case comes on for hearing.” In case the court of summary jurisdiction, in the opinion of the appellant, states the case improperly the proper course will be to apply to the High Court for a *mandamus*. The court will not, on a mere suggestion by an appellant at the argument that there has been misconduct or negligence in drawing a case, send it back to be re-stated or amended (*Townsend v. Read* (1861) 10 C. B. (N.S.) 308 ; 30 L. J. M. C. 223 ; 4 L. T. 447 ; 9 W. R. 659).

The proper time to apply to amend a case is when it comes on for argument and not upon a previous substantive motion for that purpose. In *Christie v. St. Luke's Chelsea*, (1858), 8 El. & Bl. 992 ; 27 L. J. M. C. 153 ; 4 Jur. (N.S.) 734 n. ; 6 W. R. 261, Lord CAMPBELL, C. J., said : “ The court can only interfere

when the justices have refused to state any case. When they have stated a case, it would be very inconvenient to discuss on a motion the merits of a case which cannot be properly ascertained before argument. The case must come on for hearing, and, if on the hearing it turns out to be defectively stated, the court can, if they think fit, send it back for amendment."

Case may not be amended by consent.—The court have refused to allow a case stated by justices to be amended by consent of the appellant and respondent (*Walker v. Welburn* (Michas. 1860)). It is the justices who state the case, and only they can amend the case. According to the decision in *Gloucester Board of Health v. Chandler* (1863), 32 L. J. M. C. 66 ; 7 L. T. 722, *post*, p. 73, if the justices are asked to amend it will probably have the effect of throwing the appellant out of time. The case as received from the justices must be served on the respondent and transmitted to the Crown Office within three days. When the appellant desires an amendment he must wait until the argument ; and if it is shown to the court that the case has not been properly stated, then the court may send the case back to the justices for the purposes of amendment. The parties may, however, agree upon the facts at the argument, and so do away with the necessity of a re-statement of the case.

Delivery of case to appellant.—The case having now been stated, it will be delivered to the appellant.

The Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 3, provides that the appellant shall within three days after receiving such case, transmit the same

to the court named in his application (o), first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called the respondent.

Service and transmission of case.—These conditions must be strictly performed ; otherwise the appeal will, on the application of the respondent, be struck out of the Crown Paper.

In *R. v. Middlesex JJ.* (1843), 7 Jur. 396, *ante*, p. 42, the following rule was laid down : “ That where a particular thing is required by an Act of Parliament to be done within a certain number of days, the last of such days is to be reckoned, although it happens to fall upon a Sunday.”

This was followed in *Peacock v. R.* (1858), *ante*, p. 42, and *post*, p. 74, and *Pennell v. Churchwardens of Uxbridge* (1862), 31 L. J. M. C. 92 ; 26 J. P. 87 ; 8 Jur. (N.S.) 99 ; 5 L. T. (N.S.) 685 ; 10 W. R. 319 ; and *post*, p. 80, and it is clear that the rule applies to the service of the notice in writing of the appeal and a copy of the case on the respondent, and the transmission of the case to the Court of Appeal within three days from the date when the case was delivered to the appellant. In *Peacock v. R.*, *supra*, it was held that the court had no jurisdiction unless the provisions of s. 2, *ante*, p. 2, which gives the right of appeal, were complied with.

Sunday.—The Act says nothing about excluding Sunday in the computation of the three days, and it must count as one of the days. And see *ante*, p. 41.

In *Gloucester Local Board of Health v. Chandler* (1863), 32 L. J. M. C. 66 ; 7 L. T. 722 ; 27 J. P. 88,

and *post*, p. 79, it was held that after a case has been stated and signed by the justices under the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), and delivered to the appellant, it becomes wholly inoperative, and no appeal can be had upon it unless the appellant transmit it to the court within three days after he has received it from the justices. If after the expiration of the three days the case remains in the appellant's hands, and he takes it back to the justices, the justices have no power of amending it; and if they do so in fact the appellant does not gain a further period of three days from the date of the amendment for transmitting the case to the court.

In *Morgan v. Edwards* (1860), 29 L. J. M. C. 208; 24 J. P. 245; 5 H. & N. 415; 6 Jur. (N.S.) 379, and *post*, p. 78, the Court of Exchequer held, following the decisions in *Peacock v. R.* (1858), *ante*, p. 73, and *Woodhouse v. Wood and Another* (1859), 23 J. P. 759; 29 L. J. M. C. 149; 6 Jur. (N.S.) 421; 1 L. T. 59, that the transmitting the case to the court, and the giving notice with a copy of the case to the respondent within the time named, are conditions precedent to the right of the appellant to have the case heard, and that an objection arising from the omission to do so cannot be waived.

In *Woodhouse v. Wood and Another* (1859), *supra*, the clerk of the justices sent to the respondents the draft of the case, and they returned it. The clerk then sent the case to the appellant, who transmitted it to the Crown Office without first giving notice in writing of the appeal, together with a copy of the case, to the respondent:—*Held*, that the court had no jurisdiction to hear the appeal.

Respondent may not waive irregularity.—These cases are very strong and show that the statute must be construed strictly. They go so far, indeed, as to show that there can be no waiver by the respondent of a default by the appellant.

When appellant has done all in his power to comply with statute.—If, however, the appellant had done all in his power to comply with the statute, though he might have failed to give such notice and a copy of the case to the respondent within the proper time, if such failure arose from the respondent keeping out of the way, there might be ground for considering whether a party might not be allowed to enter his case though the statute may not have been strictly complied with. See Rule 3, *post*, p. 83, and *Banks v. Goodwin*, *post*, p. 78.

Proceedings on default by appellant.—In case of default by the appellant the respondent may apply by way of motion to strike the case out of the Crown Paper or take the objection at the hearing of the case. The case of *The Great Northern and London and North Western Joint Committee v. Inett* (1877), 2 Q. B. D. 284 ; 41 J. P. 710 ; 25 W. R. 584 ; 46 L. J. M. C. 237, and *ante*, p. 38, is an authority for this proposition. There a case had been stated by justices under the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), but the appellant had not complied with the conditions required by that Act, and there being consequently no jurisdiction to hear the case, the respondent applied by way of motion to strike the case out of the paper. In granting the application COCKBURN, C.J., observed that there was no difference in the practical result whether the respondent

came to inform the court of the objection by means of a separate application or at the hearing. And see *Peacock v. R.*, *ante*, p. 74, where a similar application at the hearing was granted, and *Morgan v. Edwards*, *ante*, p. 74.

Application to strike case out of paper.—For this purpose the respondent should move for a rule *nisi* to have the case struck out of the paper. The affidavit in support should be intituled in the name of the parties (*Johnson v. Simpson* (1860), 23 J. P. 775 ; 1 L. T. 60). As to notice of the motion and the other procedure, see Crown Office Rules 255 and 256 (*p*).

Order in steps of Appeal.—It is to be observed that a certain order must be adhered to in the steps the appellant is to take after he has received the case from the justices. He must also take those steps within a fixed time.

The first step to be taken is to serve a copy of the case with a written notice of appeal on the respondent. The next step is to transmit the case to the court named in his application (the Divisional Court of the King's Bench Division).

And first as to the order of the proceeding. In *Ashdown v. Curtis* (1862), 26 J. P. 312 ; 31 L. J. M. C. 216 ; 8 Jur. (N.S.) 511 ; 6 L. T. 331 ; 10 W. R. 667, notice of appeal under the statute 20 & 21 Vict. c. 43, s. 2, was not given to the respondent before the case was lodged in court, and a motion to strike out the case was made absolute. In this case the conviction was made on February 1st. The magistrate, at the request

(*p*) When the appellant has failed to comply with the statute, and the case is either abandoned or struck out, the Court has still jurisdiction over the costs, and will order them to be paid by the appellant ; *post*, p. 135.

of the appellant, stated a case for the opinion of the High Court, and delivered it to the appellant on Friday, the 7th of the same month. On Saturday, the 8th, he sent the case to the Crown Office, and also a letter by post to the respondent containing a notice of appeal and a copy of the case, which the latter received in due course of post on the Sunday. The notice of appeal was therefore put into the post before the case was lodged, though not received till afterwards. WIGHTMAN, J., in making the rule absolute, said: "By the terms of the section, before the case is transmitted to the court the appellant must give the respondent notice of appeal in writing. This the appellant has not done in the present case, unless the putting the letter into the post is a giving notice in writing. I think that is not so; and that the respondent cannot be said to have had any notice given him until he received it on the Sunday. The notice, therefore, has been given too late."

In *Edwards v. Roberts*, [1891] 1 Q. B. 302; 55 J. P. 439; 60 L. J. M. C. 6, the court held that there was no jurisdiction to hear an appeal against a decision of justices by way of a case stated under the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2, unless the appellant had given the respondent a notice in writing of the appeal together with a copy of the case before transmitting the case to the court.

Where a case was stated by licensing justices under s. 33 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), in reference to the refusal of a license, the superintendent of police who had appeared to oppose the license, and to whom notice in writing of the appeal had been given by the appellant in accordance with s. 33, it was held the superintendent was

rightly constituted respondent (*Price v. James*, [1892] 2 Q. B. 428 ; 61 L. J. M. C. 203 ; 67 L. T. 543 ; 41 W. R. 57 ; 56 J. P. 471). And see *ante*, p. 65.

In *Morgan v. Edwards* (1860), 5 H. & N. 415 ; 29 L. J. M. C. 108 ; 24 J. P. 245 ; 6 Jur. (N.S.) 379, and *ante*, p. 74, it was held that where the appellant has not complied with the conditions precedent to the appeal, there can be no waiver on the part of the respondent enabling the court to hear the case.

Transmission of case to the High Court (q).—It is obvious that the meaning of the word “transmit” in s. 2 is of importance. Does it mean the actual completion of the delivery of the case to the Court of Appeal or only the beginning of the delivery ? If, for instance, the appellant on the third day after receiving the case puts a letter containing the case into the post, and the letter is delivered to the official at the Crown Office the next day, has the appellant complied with the statute ? The case has clearly not been received within three days, although it was put into course of transmission within that time.

In *Banks v. Goodwin* (1863), 3 B. & S. 548 ; 32 L. T. 87 ; 9 Jur. (N.S.) 891 ; 7 L. T. 740 ; 11 W. R. 309 ; 27 J. P. 404, the case was delivered by the justices’ clerk to the appellant’s attorney on December 31st, and the attorney thereupon delivered a copy of it with notice of appeal to the respondent’s attorney, and on January 1st transmitted the original by post to his own London agent for the purpose of being lodged in the Crown Office. The agent received the case on January 2nd, but did not lodge it until the 10th, when he set it down for argument on the 24th, and

(q) See note (a), *post*, p. 86.

gave notice accordingly to the town agent of the respondent's attorney. On an application to strike the case out the rule was made absolute. COCKBURN, C.J., in giving judgment, said: "I am satisfied that the interpretation sought to be put on the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2, that the mere act of *sending off* the case, the starting it on its way to the court which it is meant to reach, is enough, is not the correct one. If, indeed, a party in the country sends off his case so that, throughout its progress to the court it may be said to be in the course of transmission, I think that would be sufficient. For we are not to put a strained construction on the word 'transmit,' but see what was the intention of the legislature when they used it, and what was the object they meant to secure. Their meaning was that the party who obtains the case shall send it off within three days, so that it shall reach the court with the greatest despatch. That would satisfy the exigency of the statute. Here, that condition has not been complied with, for although this case was sent off by the appellant from the country within three days, yet, when it reached his agent in London, that agent, instead of sending it on without delay so as to be on its way to the court, kept it for eight days lying in his office. I cannot hold that a document is in course of being transmitted which, instead of being sent in the ordinary course of things, remains in the hands of a party under such circumstances, and for the omission of that party during those eight days the appellant is clearly responsible, seeing that that party was his agent."

In *Gloucester Local Board of Health v. Chandler* (1863), *ante*, p. 73, the High Court being dissatisfied

with the way in which the case was stated, sent it back to the justices to rehear it, and then, if necessary, to state a case. This was done, and the justices dismissed the information subject to a case. The case was delivered to the appellant's attorney on December 20th. On the 29th the appellant's attorney applied to the two justices who had statēd the case for the insertion of some words in one of the sections of the Public Health Act which had been omitted. This being done, the appellant's attorney thereupon gave a copy of the case to the respondent.

Upon a motion to strike the case out of the Crown Paper, MELLOR, J., said, in making the rule absolute : "It is very clear in this case that I must hold, in conformity with previous decisions, that this is a condition precedent to the right to have the case set down for argument.

"When the case was received by the appellants the time commenced to run, and when the three days elapsed the case was dead, and it could not be revived by referring it again to the justices and getting it altered."

Power of justices to amend case after its delivery.

—It is doubtful whether justices can amend a case within the three days after they have delivered it to the appellant (*ibid.*).

In *Pennell v. Churchwardens of Uxbridge* (1862), 31 L. J. M. C. 92 ; 26 J. P. 87 ; 8 Jur. (N.S.) 99 ; 5 L. T. (N.S.) 685, and *ante*, p. 73. G., an attorney in Uxbridge, Middlesex, was instructed by the London attorneys of the party interested, to attend and resist a summons before justices in the town. The justices

decided against the party, who, being dissatisfied, sent the justices a written notice demanding a case to be stated by the justices under the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43). The justices stated the case and sent it to G. on Thursday, who the next day forwarded it to the London attorneys. The latter deposited the case in the office of the court on the Monday following :—*Held*, that G. had presumable authority to receive the case for the appellant, and that as the case had not been transmitted to the court within three days after it had been received, the provisions of s. 2 of the above-mentioned statute had not been complied with, and consequently that the appeal must be struck out.

In *Mayer v. Harding* (1867), L. R. 2 Q. B. D. 410 ; 16 L. T. 429 ; 15 W. R. 813 ; 9 B. & S. 27 n ; 31 J. P. 376, the appellant had received the case from the justices on Good Friday, and transmitted it to the proper court on the following Wednesday :—*Held*, that as the offices of the court were closed from Friday until Wednesday, the appellant had transmitted the case as soon as it was possible to do so, and therefore had sufficiently complied with the requirements of the second section.

In *Aspinall v. Sutton*, [1894] 2 Q. B. 349 ; 10 R. 465 ; 58 J. P. 622 ; 63 L. J. M. C. 205, the case was stated by justices and received by the appellant's solicitors on Friday, April 13th. It appearing to them that the case contained a mis-statement of fact, they telegraphed to the justices upon the same day asking that a copy of the depositions might be attached to the case. On the following day (Saturday, April 14th), the justices sent an affirmative reply by telegram.

On Monday, April 16th, a clerk to the appellant's solicitors went to Buckinghamshire to serve notice of appeal and a copy of the case upon the respondent, a police constable. The clerk experienced some difficulty in finding the respondent and effecting the service, and in consequence was unable to return to town in time to lodge the case at the Crown Office before four o'clock that afternoon. Early on the morning of the following day (Tuesday, April 17th), the case was lodged at the Crown Office. On a preliminary objection that the case was not lodged in time, the appeal was dismissed. WRIGHT, J., said: "My brother COLLINS and I have consulted the officers of the Crown Office, and we find that the practice is perfectly settled. A case stated by justices must be lodged at the Crown Office within three days after its receipt by the appellant."

In *Mackinnon v. Clark* (1898), 67 L. J. Q. B. 763, the question arose as to the meaning of the word "transmit" in the Corrupt and Illegal Practices Act, but A. L. SMITH, L.J., in giving judgment, referred to *Pennell v. Churchwardens of Uxbridge* (1862), *ante*, pp. 73, 80, and *Banks v. Goodwin* (1863), 3 B. & S. 548; 32 L. J. M. C. 87; 9 Jur. (N.S.) 891; 7 L. T. 740; 11 W. R. 309, *ante*, p. 78, and said they did not throw any light upon the meaning of the word "transmit" in the Corrupt and Illegal Practices Act. "The word 'transmit' may well have a different meaning in different statutes." In this case, the Court of Appeal decided that the word "transmit" does not mean lodge, and that a return respecting election expenses is transmitted to the returning officer within the meaning of s. 33 (1) of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), which provides that "within thirty-five days after the day on which

the candidates returned at an election are declared elected, the election agent of every candidate at that election shall transmit to the returning officer a true return" of the candidate's election expenses—if the return is posted to the returning officer before, although it may not be actually received by him until after the expiration of the thirty-five days.

Meaning of transmission.—From the cases decided under the Act, it is evident that (1) "transmit" means the completion of the act of delivery, that is to say, the actual receipt of the case by the Crown Office; (2) that the appellant must take the risk of any act for which he or his agents are responsible, occurring between the sending off of the case and its reception at the place of its destination; (3) that if between the sending of the case and its receipt, delay should be occasioned by the default of an independent third party, *e.g.*, the post office, and so put out of the control of the appellant, the court might allow the appeal to be heard, notwithstanding the case had not been received within three days from its delivery by the justices to the appellant; (4) where by the regulations of the High Court it is impossible to comply with the requirements of s. 2, Summary Jurisdiction Act, 1857, for instance, the closing of offices in vacation, the appellant will not be prejudiced.

It is to be noted that No. 3 is problematical, and BLACKBURN, J., in the case of *Banks v. Goodwin*, *supra*, took care to say that he would be sorry to encourage anyone to trust such matters to the post.

Personal service of notice of appeal.—The last point to be noted in this section is the manner of service. It

has not been decided that the notice of appeal and copy of the case shall be served personally, and it would therefore seem to be a sufficient service if left at the house or place of business of the respondent, with a clerk, wife, or servant, or served upon the solicitor who is still acting and accepts service (Short and Mellor, Crown Office Practice, 1890, p. 476).

Service of notice of appeal on respondent's solicitor.—The words of the section are “first giving notice in writing of such appeal, with a copy of the case so stated and signed to the other party to the proceeding in which the determination was given.”

In *Syred v. Carruthers* (1858), El. B. & E. 469 ; 27 L. J. M. C. 273 ; 4 Jur. (N.S.) 949 ; 6 W. R. 595, it was held that the service may be upon the solicitor who appeared for the respondents before the justices, if the respondent cannot be found.

“I question whether in all cases where the giving of a notice is a statutory condition of the right to appeal, it does not become the imperative duty of the person seeking to appeal to see that the notice of appeal is really received by the person to whom it is addressed” (*R. v. Essex JJ.* (1895), 43 W. R. 378 : KENNEDY, J., at p. 379).

Hill v. Wright is a strong case as to personal service. Here, the case was served upon each of the respondent's solicitors, but not upon the respondents themselves, and it was held that the conditions of s. 2 had not been complied with, and the court dismissed the appeal.

In *Anderson v. Reid*, 18 T. L. R. 463, Law Journal, April 5th, 1902, a question of practice was raised with

regard to the service of the case. When the case was completed the respondent was abroad, but within three days of its receipt by the appellant it was served on the solicitor who had acted for the respondent before the magistrate. It was contended that this was sufficient under *Syred v. Carruthers* (1858), *supra*, and the court, following this case, allowed the appeal to proceed, and did not follow *Hill v. Wright* (1896), 60 J. P. 312, where such service was held insufficient.

Exceptions to rule for personal service. — The result of these decisions is this, that when any attempt is made to evade service by the respondent, or when service is impossible by reason of the respondent's absence, service on the solicitor who appeared before the justices will suffice, but unless there is a manifest attempt to evade service, or absence makes it impossible, service on the respondent is a condition precedent to the right of appeal.

Service on Sunday.—Although Sunday counts as one day in computing the number of days, it is a *dies non*, so far as service on that day is concerned, such service being inoperative. A notice, however, received by post on Sunday, operates as from the following day (*In re Inhabitants of Asprell v. Lancashire JJ.* (1852), 16 Jur. 1067; *R. v. Leominster* (1862), 32 L. J. M. C. 95).

CHAPTER III.

THE PROCEEDINGS IN THE HIGH COURT.

WE have now reached the stage where (1) the case has been stated and delivered to the appellant by the justices ; (2) notice of appeal in writing has been served upon the respondent together with a copy of the case ; and (3) the case has been duly transmitted to the Crown Office at the Royal Courts of Justice in London (*a*). We have, therefore, to consider what other proceedings are necessary before the High Court can be asked to give its decision upon the case.

Rules of procedure in High Court.—The rules to be followed at this stage are few, the procedure being regulated by the Summary Jurisdiction Acts, 1857 (20 & 21 Vict. c. 43), and 1879 (42 & 43 Vict. c. 49), which have been the subject of our consideration in the preceding pages, and the Rules of the Supreme Court.

Crown Office Rules.—The Crown Office Rules do not apply to the stating of a case by a court of summary jurisdiction for the opinion of the High Court, because this form of appeal is not strictly a proceeding on the Crown side.

The appeal, in fact, falls within the scope of s. 45

(*a*) The Crown Office practice requires that the case should be transmitted to the Crown Office by the London agents of the appellant's solicitors if the case is one from the country.

of the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), which provides that all appeals from petty or quarter sessions, from a county court, or from any other inferior court, which might before the passing of this Act have been brought to any court or judge whose jurisdiction is, by this Act, transferred to the High Court of Justice, may be heard and determined by Divisional Courts of the said High Court of Justice, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose, pursuant to rules of court or (subject to rules of court) as may be so assigned according to arrangements made for the purpose by the judges of the said High Court. The determination of such appeals respectively by such Divisional Courts shall be final, unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court, by which any such appeal from an inferior court shall have been heard.

Appeal to be heard by Divisional Court.—By s. 13 of the Supreme Court of Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 23, the power to make rules conferred by s. 17 of the Supreme Court of Judicature Act, 1875 (38 & 39 Vict. c. 77), and enactments amending the same shall be deemed to include the power to make rules for regulating the procedure on appeals from inferior courts to the High Court. Order 59, r. 4, Rules of the Supreme Court, 1883, provides that every judge of the High Court of Justice for the time being shall be a judge to hear and determine appeals from inferior courts under s. 45 of the principal Act. All such appeals (except Probate and Admiralty appeals from inferior courts, and from

justices, which shall be to a Divisional Court of the Probate, Divorce, and Admiralty Division) shall be entered in one list by the officers of the Crown Office Department of the Central Office, and shall be heard by such Divisional Court of the King's Bench Division as the Lord Chief Justice of England shall from time to time direct.

Appeals from courts of summary jurisdiction to the High Court are therefore assigned to the Crown Office (*b*).

Case must be filed.—The case having been delivered at the Crown Office, must be filed, and for this a stamp of 10s. is required. A stamp of £1 must also be affixed to a præcipe for the entry of the case for hearing. The case having been entered, the next step is to give notice of the entry to the respondent. It should be noted that a case when properly stated is divided into paragraphs. But in appeals from courts of summary jurisdiction by way of a case stated, the case is prepared or stated by the justices or magistrate. In practice the justices, magistrate, or their clerk, may be assisted by the appellant, but in theory, at any rate, it is the justices or magistrate who state the case. If the case

(*b*) The Crown Office is now a department of the Central Office, and in addition to its ordinary work transacts all business relating to appeals to the King's Bench Division from inferior courts, except bankruptcy appeals from county courts. The days of attendance at the Crown Office are the same as those in the other departments of the Central Office; that is to say, every day in the year except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday, Christmas Day and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation or thanksgiving (R. S. C., O. LXIII., r. 6). The office hours are from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours are from eleven in the forenoon to three in the afternoon (R. S. C., O. LXIII., r. 9).

is stated imperfectly, there is the remedy by which the High Court may remit the case to be more fully stated; but at the present stage the practice in the Crown Office requires that the case should be divided into paragraphs, and numbered consecutively, for the convenience of the judges, and if this be not done by the justices, it may be done by the appellant, but no other alteration can be made.

Date of hearing.—The case has now been entered, and a nominal date is given for the hearing, but as a matter of practice the case will come on in its turn.

Paper books.—Two days before the nominal date of hearing three paper books must be delivered at the Crown Office for the use of the judges. The term “paper books” is the old expression for the case itself. The paper books are written copies of the case, and contain nothing else except it may be copies of any document which is referred to in the case, and which it may be necessary to set out in full. It may be well to add to the case copies of any private Act of Parliament which applies to the case. It is not necessary that these paper books should be printed, as the Crown Office Rules with reference to the printing of the paper books do not apply. The case will now come on in its turn for argument.

Number of counsel to be heard on argument.—Only one counsel is heard on each side (*Hawes v. Peake* (1876), 33 L. T. 818; 24 W. R. 407; *Spurling v. Bantoft*, [1891] 2 Q. B. 384; 60 L. J. Q. B. 745; 65 L. T. 584; 40 W. R. 157; 17 Cox C. C. 372; 56 J. P. 132), that is to say, the appellant and respondent may be represented by counsel, but the justices have no right

to be heard in support of their decision (*Smith v. Butler* (1885), 16 Q. B. D. 349 ; 34 W. R. 416) (*c*).

In this case the respondents did not appear on the argument before the Divisional Court, but counsel on behalf of the justices appeared and argued against the appeal. The appeal having been allowed, the appellant asked for his costs. The application was refused, the court stating that it was not usual to allow costs against a respondent who did not appear, and that it was quite clear that the justices had no right to be heard. If the court had known that counsel opposing the appeal had been instructed by the justices, he would not have been heard. In *R. v. Thornton* (1898), 67 L. J. Q. B. 249 ; 1 Q. B. 334 ; 46 W. R. 241, the justices had been served with notice of the appeal. They appeared by counsel and asked for costs. The court refused the application, and intimated that upon appeals from justices the justices ought not to appear by counsel in the Court of Appeal, unless their character or *bona fides* was in question, or other very special circumstances were present.

When justices may be heard.—When, however, the magistrates refuse to state a case, and a rule *nisi* for a *mandamus* to state a case is applied for, the magistrates may take advantage of the Review of Justices Decisions Act, 1872 (35 & 36 Vict. c. 26). Section 2 provides that whenever the decision of any justice or justices is called in question in any superior court of common law, by a rule to show cause or other process issued upon an *ex parte* application, it shall be

(*c*) The practice is stated in Short's Crown Office Rules, 1886, p. 64, in the note to r. 147 : "On the argument upon an order *nisi* all the counsel instructed on both sides may be heard ; but upon a special case only one counsel is heard on each side.

lawful for any such justice to make and file in such court an affidavit setting forth the grounds of the decision so brought under review, and any facts which he may consider to have a material bearing upon the question at issue, without being required to pay any fee in respect of filing such affidavit or any stamp duty thereupon, and such affidavit may be forwarded by post to one of the masters of the court for the purpose of being filed. Section 3 provides that the court shall take into consideration the matter contained in the affidavit.

Composition of Divisional Court.—Since 1902 the Divisional Court consists of three judges. It formerly consisted of two judges, and in cases of importance and where a Divisional Court of two judges differed, a specially constituted court was ordered to sit. Provision was made for this by s. 4 of the Supreme Court of Judicature Act, 1884 (47 & 48 Vict. c. 61), which provides that a Divisional Court of the Queen's Bench Division of the High Court may at any time be constituted of more than two judges if the President of the said Division, with the concurrence of not less than two other judges thereof shall be of opinion that it is expedient so to constitute the same. As we have seen, the usual Divisional Court now consists of three judges, and the necessity for applying to have a special court constituted does not therefore arise.

In cases where there is no appeal from the Divisional Courts, a specially constituted Divisional Court appointed by the Lord Chief Justice has power to review, and if it thinks fit to differ from previous decisions of Divisional Courts on the same subject (*Kruse v. Johnson*, [1898] 2 Q. B. 91; 67 L. J. Q. B. 782; 46 W. R. 630;

78 L. T. 647 ; 62 J. P. 469 ; 14 T. L. R. 416). “In weighing previous authorities, it is further to be recollected that the cases have come before Divisional Courts usually consisting of two members, and that those cases being in their nature criminal, there has been no judgment of a Court of Appeal upon them. It is for this reason that the present special court has been constituted. I cannot doubt that this court has authority to review, and, if it thinks fit, to differ from any prior decision of a Divisional Court on this subject” (*ibid.*, Lord RUSSELL, C.J.).

From this case it would seem that the Divisional Courts, which now consist of three judges, are not bound by the former decisions of Divisional Courts of two judges in criminal matters, but may review, and, if they think fit, differ from previous decisions on the same subject by Divisional Courts of two judges.

See *Fortescue v. Vestry of St. Matthew, Bethnal Green*, [1891] 2 Q. B. 170 ; 60 L. J. M. C. 172 ; 65 L. T. 256 ; 55 J. P. 758 ; and *Logsdon v. Booth*, [1900] 1 Q. B. 401 ; 69 L. J. Q. B. 131 ; 48 W. R. 266 ; 64 J. P. 165, and *ante*, p. 21, n.

Appellant begins.—Counsel for the appellant begins and has the right of reply. This is provided for by the Crown Office Rules, 1886, which regulate the right to begin in the argument of cases before the Divisional Court, and is as follows : On the argument of any case entered in the Crown paper, when the court has granted an order *nisi*, the counsel for the party showing cause shall begin ; but on an order *nisi* to quash an order or conviction, and in every other case, the counsel for the appellant or party desirous of displacing the *status quo* shall begin.

When respondent does not appear.—If the respondent does not appear, the appellant, in order to obtain the judgment of the court, must show that the decision of the justices was wrong (*Syred v. Carruthers* (1858), El. B. & E. 469 ; 27 L. J. M. C. 273 ; 4 Jur. (N.S.) 949).

Death of one of the parties to appeal.—Notwithstanding the death of one of the parties to the appeal before the argument, the court will hear counsel (*Hesketh v. Atherton*, November 22nd, 1873). This now appears to be the settled rule, although there is authority to the contrary in the case of *Jones v. Fallowfield*, December 13th, 1883, where a Divisional Court of MATTHEW and DAY, JJ., ordered the case to be struck out on the ground of the death of the respondent.

When preliminary objection to be raised.—Before the argument proceeds upon the merits, it may be that a preliminary objection is taken. Such an objection may arise through the neglect of the appellant to comply with any of the rules which are a condition precedent to the appeal. These rules have been dealt with already in Chapter II.

Case may be remitted for amendment to magistrates.—Again, the court of summary jurisdiction may not have stated the case in such a way that the Divisional Court can properly deal with it. If so the case will probably be remitted to the magistrates to restate or amend it. Section 7 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), enables the court, for the opinion of which a case is stated, to cause the case to be sent back for amendment, and thereupon

the case shall be amended accordingly, and judgment shall be delivered after it shall have been amended. The magistrates may not have found the proper fact. For instance, in *Hoare v. Ritchie and Son*, [1901] 1 K. B. 434 ; 65 J. P. 261 ; 84 L. T. 54 ; 49 W. R. 351 ; 70 L. J. Q. B. 279), proceedings were taken under s. 36 of the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), in which the owners of a factory are called on to provide, maintain, and use a fan or other mechanical means for preventing the inhalation of dust generated in the factory, by the workers to an injurious extent. The magistrate dismissed the summons on the ground that it had not been proved that the dust generated by the process had been inhaled by the workers to an injurious extent. On a case stated it was held unnecessary to prove by evidence that any workers have sustained actual injury, but it was enough to show that dust was generated to such an extent that its tendency was necessarily to injure the workers' health in course of time.

In *Crabtree v. Skelton* (1901), 70 L. J. Q. B. 560, the justices stated a case in which they held that when milk was supplied from house to house from cans, the name and address on the cart in which the cans were conveyed, was a sufficient compliance with s. 9 of the Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51). On the case coming on for argument, Lord ALVERSTONE, C.J., remarked that the case was stated in an unsatisfactory manner. The justices had not found whether the milk was in fact sold from the cart or from the can, and the court ordered the case to be remitted in order that the justices might find this fact.

In *Re County Council of Cardigan* (1890), 54 J. P. 792, the court held that a case stated by quarter sessions

for the opinion of the High Court, under 51 & 52 Vict. c. 41, s. 29, the facts which have actually arisen, and the decision thereon must be set forth; and the High Court will not answer abstract questions as to the construction of the statute, unless arising out of facts which have actually occurred. And see *Shackell v. West* (1859), 2 El. & El. 326; 29 L. J. M. C. 45; 1 L. T. (N.S.) 28; 6 Jur. (N.S.) 95; 8 W. R. 22.

Conviction under wrong section of a statute.—If the court find that all the elements necessary to justify an order of the court of summary jurisdiction under some section other than the section of an Act under which the proceedings are taken, were before the justices, and that the merits were fully discussed, the court may direct the order to be drawn up under the proper section, but this will not be done if the effect is to prejudice the appellants' right of appeal to quarter sessions (*Shackell v. West, ante*). Under such circumstances the court will remit the case to be reheard.

The court cannot reduce a penalty on a case stated (*Evans v. Hemingway* (1888), 52 J. P. 134).

Proceedings subsequent to judgment of Divisional Court.—When judgment has been given by the Divisional Court, it is evident that further proceedings may yet be necessary or possible before the question of law is finally settled, or the requirements of the law fully satisfied. If, for instance, the appeal is from the conviction of a magistrate and the appellant succeeds, there can be little or no complication; the conviction is quashed, and there is an end of it. If, however, the appeal is from the refusal of a magistrate to convict or from the dismissal of an information or complaint, and the appellant succeeds, then it is obvious that further

proceedings are necessary. The case, in short, is remitted to the magistrate to convict, and the parties must again be brought before the court of summary jurisdiction. By s. 9 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), it is provided that after the decision of the superior court in relation to any case stated for their opinion under this Act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order which may have been affirmed, amended, or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination, if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order by reason of any defect in the same respectively. See *Hunter v. Clark and Others* (1902), 18 T. L. R. 366.

In the face of this enactment, it is difficult to see how such a case as *R. v. Haden Corser* (1892), 8 T. L. R. 563, could arise. In that case, Mr. Haden Corser, one of the metropolitan police magistrates, had dismissed a complaint under the Building Acts subject to a case. The Divisional Court held that the magistrate should have convicted and remitted the case accordingly. The learned magistrate, however, was under the impression that having dismissed the information, he had no further jurisdiction, and that he could not resummon the parties or rehear the case as he had already heard and determined it. On an application for a *mandamus*, the rule was made absolute with costs, and the magistrate ordered to convict.

Case may be remitted to justices for re-hearing.—

It is evident from a perusal of this case and s. 9 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), that when a case is remitted to the court of summary jurisdiction to convict, that there need be no rehearing of the case, all that is required is that the magistrate should order the parties to appear before him and then convict in accordance with the judgment of the superior court.

After a case has been sent back to the justices with instructions to rehear the case, a second case may be stated upon any further point of law which may arise. The justices may also hear further evidence and make a new order on such rehearing (*R. v. Blowham* (1834), 1 A. & E. 386 ; *Broadbent v. Shepherd*, [1901] 2 K. B. 274 ; 70 L. J. Q. B. 628 ; 65 J. P. 499 ; 84 L. T. 844 ; 49 W. R. 521 ; 45 Sol. J. 61 ; Times, November 16th, 1900 ; and see *R. v. Mainwaring* (1858), 27 L. J. M. C. 278). There may, however, be a right of appeal from the Divisional Court.

When appeal lies to Court of Appeal.—When judgment is given, there are two courses open to the party against whom the court decides, that is to say, if the case is upon a civil and not a criminal issue. If it is the latter, there is no alternative for the losing party but to acquiesce in the decision of the court ; but if the matter be civil, then there is the alternative course of taking an appeal to the Court of Appeal.

Before this can be done it must be clear that the matter is one in which an appeal to the Court of Appeal (c) from the Divisional Court will lie.

(c) By s. 19 of the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), "The Court of Appeal shall have jurisdiction

The appeal, if such there be, is given by the latter part of s. 45 of the Supreme Court of Judicature Act, 1873, *ante*, pp. 86, 87, which provides that the determination of such appeal respectively by such Divisional Courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court, by which any such appeal from an inferior court shall have been heard. By s. 47 of the same Act it is provided that no appeal shall lie from any judgment of the said High Court in any criminal cause or matter. By s. 49 no order made by the High Court or any judge thereof, by the consent of parties, or as to costs only, which are left to the discretion of the court, shall be subject to any appeal except by leave of the court or judge making such order.

By s. 19 of the Supreme Court of Judicature Act, 1875 (38 & 39 Vict. c. 77), "subject to any rules of court to be made under this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court [of Justice] and in the Court of Appeal respectively, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act."

And by s. 20 of the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59): "Where by Act of Parliament it is provided that the decision of any court or judge the jurisdiction of which court or judge is transferred

and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of her Majesty's High Court of Justice, or of any judges or judge thereof, subject to the provisions of this Act, and to such rules and orders of court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act."

to the High Court of Justice is to be final, an appeal shall not lie in any such case from the decision of the High Court of Justice, or of any judge thereof, to her Majesty's Court of Appeal."

This last section does not apply to appeals from courts of summary jurisdiction, because at the date when it (the Appellate Jurisdiction Act) passed it was not provided by Act of Parliament that the decision of the Divisional Court on appeals from inferior courts should be final absolutely, but merely final *unless* special leave to appeal was given, and hence, where this is done the decision is not final, and s. 20 of the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), does not apply (*Crush v. Turner* (1878), 3 Ex. D. 303 ; *Thomas v. Kelly* (1888), 13 App. Cas. 506 ; 58 L. J. Q. B. 66 ; 60 L. T. 114 ; 37 W. R. 353).

We have now to consider the effect of these various sections as affecting the right to appeal.

No appeal to Court of Appeal in criminal cause or matter.—In the first place it is clear that there can be no appeal (1) in a criminal cause or matter ; (2) in a civil cause or matter where the judgment or order relates to costs, or has been made by consent of the parties, except by leave of the Divisional Court making such order ; (3) in appeals from inferior courts (including courts of summary jurisdiction) unless by special leave.

It is obvious that the first question for consideration by the dissatisfied party is whether or not the issue is civil or criminal, and this question, notwithstanding the plain words of s. 47, is by no means easy to answer. There are a number of decisions upon the point. In

R. v. Steel (1876), 2 Q. B. D. 37 ; 46 L. J. M. C. 1 ; 35 L. T. 534 ; 25 W. R. 34 ; 13 Cox C. C. 354 ; 41 J. P. 245, the taxation of costs allowed to a successful defendant in a criminal information for libel was held to be a "proceeding in a criminal cause," within the meaning of s. 47 of the Judicature Act, 1873 (36 & 37 Vict. c. 66).

In *R. v. Foote* (1883), 10 Q. B. D. 378 ; 52 L. J. Q. B. 528 ; 48 L. T. 394 ; 31 W. R. 490 ; 15 Cox C. C. 240 ; 48 J. P. 36, the defendant, who was charged with publishing blasphemous libels, applied for bail, which was refused. He appealed to the Divisional Court, which dismissed the appeal, and on a further appeal to the Court of Appeal it was held that the appeal was a criminal matter within s. 47, and would not therefore lie.

Mellor v. Denham (1880), 5 Q. B. D. 467 ; 49 L. J. M. C. 89 ; 42 L. T. 493 ; 44 J. P. 472, was a case where justices had dismissed an information preferred by the appellant, the clerk to the Oldham School Board, against the respondent for neglecting to cause a child to attend school as required by the byelaws of the school board. The justices stated a case for the Queen's Bench Division, who affirmed the decision of the justices, but granted leave to appeal. The Court of Appeal dismissed the appeal, holding that the matter was a criminal one within s. 47.

In *R. v. Whitchurch* (1881), 7 Q. B. D. 534 ; 50 L. J. M. C. 99 ; 45 L. T. 379 ; 29 W. R. 922 ; 45 J. P. 617 ; 46 J. P. 134, an order was made by justices directing the defendant to fill up an ashpit so as to be no longer a nuisance. The Queen's Bench Division made absolute an order for a *certiorari* to quash this

order, on the ground that it was not warranted by the Public Health Act, 1875 (38 & 39 Vict. c. 55):—*Held*, that the order of the justices was made in a criminal cause or matter within the Supreme Court of Judicature Act, 1873, s. 47, and that an appeal from the Queen's Bench Division could not be entertained.

An order for restitution of stolen property made after the conviction of the thief is a criminal matter (*R. v. JJ. of Central Criminal Court* (1886), 18 Q. B. D. 314; 56 L. J. M. C. 25; 56 L. T. 352; 35 W. R. 243; 16 Cox C. C. 196; 51 J. P. 229).

Other cases in which it has been held that no appeal lies to the Court of Appeal because the matter is criminal within s. 47, are an order made at chambers under the Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64) (*Ex parte Pulbrook*, [1892] 1 Q. B. 86; 61 L. J. Q. B. 91; 66 L. T. 159; 40 W. R. 175; 17 Cox C. C. 464; 56 J. P. 293); an order of Divisional Court discharging a rule *nisi* for a *mandamus* to justices to compel them to hear a summons under the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49) (*R. v. Young* (1892), 61 L. J. M. C. 42; 66 L. T. 16; 17 Cox C. C. 425); an order of the High Court refusing to grant a *mandamus* to magistrates to state a case under Public Health Act (*Ex parte Schofield* or *Rook v. Schofield*, [1891] 2 Q. B. 428; 60 L. J. M. C. 157; 64 L. T. 780; 39 W. R. 580; 17 Cox C. C. 303; 56 J. P. 4; *R. v. Tyler*, [1891] 2 Q. B. 588); a decision of the Queen's Bench Division discharging rule for a *certiorari* to bring up a summary conviction (*R. v. Fletcher* (1876), 2 Q. B. D. 43 [C.A.]; 35 L. T. 538); a conviction for keeping a common gaming house (*Blake v. Beech* (1877), 2 Ex. D. 335, and

1 Ex. D. 320 ; 40 J. P. 678 ; 34 L. T. 764 ; 45 L. J. M. C. 111).

Disobedience to an Act of Parliament if punishable by a penalty inflicted by way of punishment, and not as compensation for the breach (see *R. v. Kerswill*, [1895] 1 Q. B. 1 ; 64 L. J. M. C. 70 ; 10 R. 476 ; 71 L. T. 574 ; 43 W. R. 59 ; 18 Cox C. C. 49 ; 59 J. P. 342) is a criminal offence, and as to the effect of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) on penalties, *cf. Re Gamble*, [1899] 1 Q. B. 305 ; 68 L. J. Q. B. 195 ; 63 J. P. 101 ; 79 L. T. 642 ; 15 T. L. R. 123. Therefore, orders made under the Public Health Act, 1875, are not appealable to the Court of Appeal, for such orders may be enforced by penalty, although an alternative remedy is given (*R. v. Whitchurch*, *supra* ; *R. v. Parlby* (1889), 53 J. P. 774 ; 6 T. L. R. 36 ; *Ex parte Schofield*, *supra*).

See also *R. v. Baxendale* (1880), 6 Q. B. D. 144 n ; 50 L. J. M. C. 35 n ; 29 W. R. 335, which was a conviction under the Weights and Measures Act ; *R. v. Tyler*, [1891] 2 Q. B. 588 ; 61 L. J. M. C. 38 ; 65 L. T. 662 ; 56 J. P. 118, a proceeding to recover penalties under the Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 25, 27 ; *Mayor, etc. of Southport v. Urban District Council of Birkdale* (1897), 76 L. T. 318 ; 18 Cox C. C. 537, which was a conviction for not supplying gas as provided by an Act ; and *Payne v. Wright* (1892), 61 L. J. M. C. 114 ; 66 L. T. 148 ; 17 Cox C. C. 460 ; 56 J. P. 564, an appeal against an order of the Divisional Court remitting a summons under the Metropolitan Building Act to magistrates, in

all of which cases it was held that no appeal would lie to the Court of Appeal.

Proceedings taken in the King's Bench Division to quash a conviction obtained before justices, or to compel them to state a case, are considered as being raised "in or *with regard* to proceedings, the subject matter of which is criminal" (*Ex parte Schofield* or *Rook v. Schofield*, [1891] 2 Q. B. 428 ; 60 L. J. M. C. 157 ; 64 L. T. 780 ; 39 W. R. 580 ; 17 Cox C. C. 303 ; 56 J. P. 4, *supra* ; *Ex parte Woodhall* (1888), 20 Q. B. D. 835 ; 57 L. J. M. C. 71 ; 59 L. T. 841 ; 36 W. R. 655 ; 52 J. P. 581). And see *Kruse v. Johnson*, [1898] 2 Q. B., p. 102 ; 19 Cox C. C. 103 ; *R. v. Sheil* (1900), 82 L. T. 587.

Where under a local Act for enforcement of poor rates by warrant of distress, justices granted a warrant subject to a case, and the Divisional Court affirmed their order, no appeal lay, for the proceedings before the justices might on default have ended in imprisonment (*Seamen v. Burley*, [1896] 2 Q. B. 344 ; 65 L. J. M. C. 208 ; 75 L. T. 91 ; 45 W. R. 1 ; 18 Cox C. C. 403 ; 60 J. P. 772). In this case, Lord ESHER, after referring to *Mellor v. Denham* ; *R. v. Whitchurch* ; *Ex parte Schofield*, and *Payne v. Wright*, went on to say, "The cases cited all seem to me to show that the question is not whether the proceeding must, but whether it may end in imprisonment. If it is before the justices and may end in imprisonment, the cases have held that it is criminal within section 47 of the Judicature Act."

The subject of appeal from the Divisional Court is again dealt with by Lord ESHER in a passage in his

judgment in *Ex parte Alice Woodhall* (1888), 20 Q.B. D. 832, *supra*. Referring to the words "in any criminal cause or matter," he goes on to say, "These words should receive the widest interpretation. The intention was that no appeal should lie in any 'criminal matter' in the widest sense of the term, the court (the Court of Appeal) being constituted for the purpose of hearing appeals in civil causes and matters.

"The clause applies to a decision by way of judicial determination of any question raised *in or with regard to* proceeding, the subject matter of which is criminal at *whatever stage of the proceedings* the question arises."

Test as to case being civil or criminal.—It is apparent from the cases cited that the only valuable test that can be applied to the question of whether or not the matter is criminal or civil, is the one applied by Lord ESHER, can the result be imprisonment? If so, it is criminal. If otherwise, it is not, and the test is to be applied, not to the subject matter, but to the procedure. If the proceedings are such that the party proceeded against "may," but not necessarily must, at the end of a series of steps in the proceedings be imprisoned, then the matter is criminal.

Having dealt with the question of whether or not the subject matter is civil or criminal, the next inquiry applies to how an appeal may be obtained, presupposing that the matter is civil and not criminal.

We have seen that the effect of the various sections of the Judicature Acts is to prohibit appeals (1) in criminal matters; (2) in any civil cause or matter when the judgment or order relates to costs or has

been made by consent of the parties, except by leave of the Divisional Court, making such order ; and (3) in appeals from inferior courts (including courts of summary jurisdiction), unless by special leave. With regard to (2) there can be no difficulty in ascertaining the method of obtaining the appeal, the words of the section requiring the application for leave to appeal to be made to the court or judge making such order (*Adlington v. Coningham*, [1898] 2 Q. B. 492 ; 79 L. T. 232 ; 67 L. J. Q. B. 926). With regard to (3) there is some difficulty

Mode of appeal to court of appeal.—The right to this appeal comes under s. 45 of the Judicature Act of 1873, and the latter part of the section provides that, “the determination of such appeals respectively by such Divisional Courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court by which any such appeal from an inferior court shall have been heard.” In *Holland v. Girling* (unreported, decided June 26th, 1899, and commented on in 43 Sol. J. at p. 600), however, it was held that notwithstanding the refusal of leave to appeal by the Divisional Court, the Court of Appeal had, under s. 1 (5) of the Judicature Act, 1894, the right to grant leave to appeal. Subsection (5) is as follows : “In all cases where there is a right of appeal to the High Court from any court or person, the appeal shall be heard and determined by a Divisional Court constituted as may be prescribed by rules of court ; and the determination thereof by the Divisional Court shall be final, unless leave to appeal is given by that court or by the Court of Appeal.”

Holland v. Girling, *supra*, was followed by *Godman v. Moses* (1900), 69 L. J. Q. B. 823 ; 83 L. T. 46 ; where it was held that the application for leave to appeal should be to the Divisional Court in the first instance, and if that court refuses leave the Court of Appeal may be applied to. Both these cases were appeals from a County Court, but s. 45 of the Judicature Act applies alike to appeals from County Courts and magistrates (*ante*, pp. 86, 87, 98), and the practice must now be taken to be, that when the Divisional Court refuses leave to appeal the Court of Appeal may nevertheless grant such leave.

For appeal to House of Lords from the judgment or order of the Court of Appeal, see Appellate Jurisdiction Acts, 1876 and 1887.

CHAPTER IV.

LAW AND FACT.

IN the preceding chapters we have investigated (subject to the exception contained in this chapter) (1) the conditions under which a person aggrieved has a right of appeal (Chap. I.) ; (2) how he may appeal (Chap. II.) ; (3) the proceedings in the High Court (Chap. III.) ; and we have now to consider the last, but by no means the least, condition necessary for an appeal—Was the decision of the Court of Summary Jurisdiction erroneous in point of law ?

Three elements in every case.—There are three elements in an action or proceeding before a court : the element of fact, the method of procedure, and the element of law. We have already considered in Chapter II. the method of procedure and seen that when the prescribed procedure has not been strictly complied with that the High Court has no jurisdiction to hear the appeal. There remains, therefore, the consideration of the elements of fact and law.

Appeal lies only on point of law.—It has been shown, *ante*, p. 20, that an appeal lies only on a point of law, and it is obvious that the question, whether or not the justices' decision involves a point of law is a vital element in the right of appeal. In the great majority of cases there can be little or no trouble in ascertaining whether the objection to the justices' decision is founded

upon a matter of law or fact, but none the less there still remain a considerable number of cases where it is by no means easy to say that the ground of objection to the justices' decision is on a point of law and not upon the facts. For instance, in *R. v. Bridge* (1890), *ante*, pp. 38, 46, 50, 51, the magistrate refused to state a case for the opinion of the High Court because he considered that the subject of dispute, whether or not the refuse of the boilers in the Hotel Metropole was trade refuse within the meaning of the Act 18 & 19 Vict. c. 120, s. 125, was a question of fact and not of law. The High Court ordered him to state a case. Here, it is evident, there was a conflict of opinion as to fact and law. The magistrate considered his decision was founded on fact; the High Court came to the conclusion that it was founded on law, and that he had decided erroneously in point of law.

Difficulty in distinguishing law and fact.—A perusal of a few volumes of the law reports soon makes it abundantly clear that the distinction between law and fact is often subtle and not infrequently a problem of considerable difficulty. There can be no general rule for distinguishing law and fact, and, indeed, it would be hopeless to attempt to state one, as each case differs in some material circumstance from almost every other. The most that can be done is to set out the few limited rules which are found in the cases or inferred from decisions, and illustrate them with such cases as may be in point.

General rule as to appeal.—But, in the first place, the general rule which regulates appeals to the High Court from magistrates sitting as a Court of Summary

Jurisdiction must be referred to. It is that the High Court cannot be made a Court of Appeal on a question of fact. See *Newman v. Baker* (1860), 8 C. B. (N.S.) 200 ; *Belasco v. Harmant* (1862), 31 L. J. M. C. 225 ; *Taylor v. Oram* (1862), 31 L. J. M. C. 252 ; 1 H. & C. 370 ; 8 Jur. (N.S.) 748 ; 10 W. R. 800 ; 7 L. T. 68 ; *R. v. Yeomans* (1860), 1 L. T. (N.S.) 369 ; 24 J. P. 150 ; *Re Basingstoke School* (1877), 41 J. P. 118 ; *Green v. Pensam* (1858), 22 J. P. 737 ; *R. v. Brennan* (1854), 6 Cox C. C. 381 ; *Hargreaves v. Taylor* (1863), 32 L. J. M. C. 111 ; 8 L. T. 149 ; *R. v. Raffles* (1876), 1 Q. B. D. 207 ; 45 L. J. M. C. 61 ; 40 J. P. 68.

In *Gorham v. Brice* (1902), 18 T. L. R. 424, the appellant was convicted for driving a motor car at a greater speed than twelve miles an hour, contrary to the regulations made by the Local Government Board. It was contended that the watch the constable timed the appellant with had not been tested, and the evidence of the constable could not therefore be admitted. In dismissing the appeal Lord ALVERSTONE, C.J., said he could not understand the motives with which such appeals were brought. It was possible the magistrates might have come to a wrong conclusion, but the court had no power to interfere with their finding of fact. The appeal was an attempt to turn a question of fact into one of law. It was impossible for the court to hold that observations as to time ought not to be admitted in evidence, unless it was proved that the time in question was Greenwich time.

The cases cited merely show that when the appeal turns out to be on a matter of fact and not of law the High Court will not hear the appeal. Having now

stated the only general rule that can be applied to this branch of our investigation, and which is, in fact, little more than a restatement of the statute itself, we pass on to our inquiry into the subsidiary rules, which may assist us in distinguishing questions of fact and law.

No definition of fact.—There is, as we have seen, no general rule distinguishing law and fact ; neither is there for the same reason any definition of “fact,” that is, no definition which has stood the test of legal criticism. Mr. Justice STEPHEN once essayed the task, and in the earlier editions of his digest on the law of evidence gave a definition of fact as meaning (1) everything capable of being perceived by the senses ; (2) every mental condition of which any person is conscious. In the subsequent editions this definition was withdrawn. It is not, however, necessary to attempt the definition of a fact. Indeed, it would be a bold thing to attempt what jurists of the eminence of Mr. Justice STEPHEN have abandoned as impracticable. The purpose of this chapter is not the evolution of exact terms, but the endeavour to assist the practitioner in deciding in each specific case whether the objection to a decision is founded on law or fact.

To do this I propose to state a few rules as to what is law and what is fact without any attempt at making such rules wide enough to cover all facts and all law. Cases may arise which do not fall within any rule, but it is believed that such cases will be rare and that the vast majority of cases which admit of a dispute on the point of whether or not they turn on a question of fact or law will be found in one or more of the following rules.

Question of law arising from facts found.—The court of summary jurisdiction finds the facts, and then it is a question of law whether upon the facts the case comes within the meaning of an Act of Parliament or rule of law.

In referring to the question of law and fact, Austin (Jurisprudence, Vol. I., p. 236, ed. 1873) states “the difficulty to be . . . not in determining what the law is, or what the fact is, but whether the given law is applicable to the given fact.” This, no doubt, is correct so far as it goes. It is clear that whenever the facts and all just inferences from facts are once ascertained then the High Court can determine whether or not the inferior court has applied the law to the facts. The application of the law to the facts is a question of law.

In *Hoddinott v. Newton, Chambers & Co., Limited*, [1901] A. C. 49 ; 70 L. J. Q. B. 150 ; 84 L. T. 1 ; 49 W. R. 380, Lord BRAMPTON, at p. 56, in dealing with the question of scaffolding, said : “Hitherto the Court of Appeal seems to have treated this question as a matter of fact for the county court judge, or the arbitrator, by whom the claim for compensation is heard, to determine, and upon which his finding is not open to review. In the last reported case on this subject, *Ferguson v. Green*, [1901] 1 Q. B. 25 ; 70 L. J. Q. B. 21 ; 83 L. T. 461, it was so expressly ruled by the Master of the Rolls (Sir A. L. SMITH) and COLLINS and STIRLING, L.JJ., following previous decisions by the same court in *Wood v. Walsh*, [1899] 1 Q. B. 1009, and *Maude v. Brook*, [1900] 1 Q. B. 575 ; 69 L. J. Q. B. 320. With all respect for those judgments, I cannot concur in them. I thoroughly

agree that the arbitrator or county court judge is the proper tribunal to find every fact which is necessary for the determination of the question whether the arrangement in the particular case before it is or is not 'scaffolding' within the meaning of the Act. Such, for instance, as the mode in which the arrangement is put together, the component parts of it, the materials used for its construction, the use to which it is applied, the place and the size of the place in which it is used, the dimensions of it, etc., and his finding upon such facts is, according to the general rule, final, but whether upon the facts so found the arrangement so constructed is a scaffolding sufficient to satisfy the requirements of s. 7 is, in my opinion, a question of law, which in the first instance must be adjudged by him to enable him to determine the case before him, his judgment on the question being open to review by the Court of Appeal. . . . This view is confirmed by the opinion of COLLINS, L.J., in the case of *Maude v. Brook* (*supra*), in which he expressly said 'Whether a particular arrangement is a scaffolding is not a question of pure fact, and therefore not merely a question for a jury without direction as to the law.'"

In *Fenn v. Miller* (1900), 69 L. J. Q. B. 439 ; 48 W. R. 369 ; 64 J. P. 356 ; 82 L. T. 589 ; at p. 441 of the Law Journal Report, COLLINS, L.J., said : "I agree that the question whether a workman is employed 'about' a factory must in every case be a question of fact, and that so far as it is a question of fact we are bound by the decision of the county court judge ; but I do not think that the Act leaves it at large for the county court judge to decide the question without guiding his judgment by some direction in point of

law as to what circumstances may, and what may not, constitute employment 'about' a factory."

In *Maude v. Brook*, [1900] 1 Q. B. 575 ; 69 L. J. Q. B., at p. 324, SMITH, L.J., said : "I have already said in *Wood v. Walsh & Sons*, [1899] 1 Q. B. 1009 ; 68 L. J. Q. B. 492, that I would not attempt to lay down any definition of the meaning of the word 'scaffolding.' All we can say is whether or not there is any evidence upon which it could be found as a fact that the particular arrangement which is in question is a 'scaffolding.'"

Two classes of facts.—It may be assumed that there are two classes of facts : (1) primary facts ; (2) ultimate facts. Primary facts are acts or events which can be proved by direct as opposed to circumstantial evidence. Ultimate facts are inferences drawn from primary facts. The primary facts having been proved, a process of reasoning ensues, and then the ultimate fact is arrived at. There can be little doubt that primary facts may not be the subject of appeal to the High Court from a court of summary jurisdiction. They are questions of pure fact. Nor can ultimate facts, speaking generally ; but as a matter of practice they have frequently been treated as matters of law in the High Court. For instance, in *Moss v. Hancock*, [1899] 2 Q. B. 111 ; 68 L. J. Q. B. 657 ; 47 W. R. 698 ; 63 J. P. 517 ; 80 L. T. 693, a Jubilee five-pound gold piece had been stolen and exchanged by the thief at the appellant's shop for five sovereigns. The magistrates convicted the thief and ordered restitution by the appellant. The High Court, drawing inferences from the facts stated, held that the five-pound gold piece had never passed in

currency but as an article of *vertu*, and therefore the magistrates were right in making the order for restitution.

Here it will be seen that the primary facts were the actual theft and the act of changing the five-pound gold piece. The ultimate fact was that when the coin was changed it was not passed in currency but as an article of *vertu*.

True, the High Court did not reverse the decision of the magistrates, but they heard the appeal, and therefore assumed jurisdiction to determine what was undoubtedly a fact, *i.e.*, the object with which the thief exchanged the coin.

There must be some evidence to support all findings of fact.—Where justices have arrived at some finding of fact, the court will reverse such finding if there was no evidence to support it (*Williams v. Powning* (1883), 47 J. P. 486).

It is otherwise if there is some evidence, for the question for “the court is not whether the justices came to a right conclusion, but whether there was any evidence to support that conclusion” (*Green v. Pensam* (1858), 22 J. P. 737 : *per* Lord CAMPBELL, C.J.).

In *R. v. Yeomans* (1860), 24 J. P. 150, the court said, “The question we have to deal with is whether there was evidence before the magistrates on which they might find the fact. We must not say whether the inference they drew was right or wrong.”

Again, courts of summary jurisdiction may determine as a fact, that a certain erection is a “new building” within the meaning of an Act ; but they may also find certain facts as to such an erection, and then ask in a special case whether such facts justify them in holding

that the erection is or is not a new building (*Hobbs v. Dance* (1873), L. R. 9 C. P. 30; *Williamson v. Tierney* (1900), 17 T. L. R. 174).

In *Hensey v. White* (1900), 69 L. J. Q. B., at p. 190 (an action under the Workmen's Compensation Act), A. L. SMITH, L.J., said: "When once the county court judge has found as a fact that the workman died from disease, and not by reason of an accident, and there was evidence to support the finding which there clearly was, that ends the case so far as the appeal is concerned."

From these cases we may extract the following rules:

- (1) That primary facts do not form the subject of appeal.
- (2) That ultimate facts may not be the subject of appeal, with the following exceptions:
 - (a) Where the magistrates find certain facts to exist and draw inferences from those facts, the superior court may be asked whether the facts warranted the inference, or whether there was any evidence upon which the magistrates could find the facts (*Pasquier v. Neale* (1902), 18 T. L. R. 704).
 - (b) If a magistrate draws inferences which may legitimately be drawn from facts, and then upon such inferences holds a defendant guilty, it is a question of law as to whether the inferences drawn warrant the judgment.
 - (c) Where it is manifest from the facts stated that, in order to arrive at the conclusion he has arrived at, the magistrate must have decided a matter of law in a certain way,

that will be a determination in point of law with respect to which an appeal will lie.

- (3) That the High Court will not set aside a finding of fact where there is no evidence before it upon which the court could say such finding was wrong.

Where justices decide by a faulty process of reasoning.—Where the magistrates arrive at a certain conclusion of fact because of a syllogism which they set out, and the syllogism is faulty, the High Court on appeal may deal with the conclusion of fact, or to put it in other words, when the magistrates in finding the crucial facts, give their reasons for doing so, it is open to the High Court to deal with the decision (*Holness v. Mackay and Davis* (1899), 68 L. J. Q. B. 724). Or to put it yet another way, where the magistrates find the fact simply, the High Court cannot go behind the finding (unless it may be that there is no evidence upon which such finding can be had), but where the magistrates set out the grounds and reasons upon which they arrive at the conclusion, the High Court may deal with such conclusion (*Kirshenboim v. Salmon* (1898), 67 L. J. Q. B. 601).

Austin (Jurisprudence, i., 236 (ed. 1873)) says : there are questions which are neither law nor fact—questions of reasoning, of the application of law to fact, questions of method, of procedure.

And first as to questions of reasoning, it is clear that facts may be found after applying the reasoning faculties to other facts. The facts found by the process of reasoning are just as much facts as those upon

which the reasoning powers have been exercised. There is, however, as we have seen, a distinction between the two classes of facts. The primary facts are not to be made the subject of appeal, but the facts which are founded upon primary facts, and only arrived at by a process of reasoning, may, in many cases, be the subject of appeal.

Application of law to facts. — The law is the standard, the facts are the varying circumstances which conform or not with such standard.

It is a question of law what this rule or standard is, and it follows that unless there be a question as to the application of some rule or standard, there cannot be a question of law.

It is a question of law (1) as to whether any such rule or standard exists; (2) whether, if such rule or standard exists, the state of facts found by the inferior court fall within such rule or standard.

In *Roper v. Greenwood* (1900), 83 L. T. 471, on an appeal from the judgment of a county court in proceedings for compensation under the Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), COLLINS, L.J., in delivering judgment said: "When we are dealing with a word in an Act of Parliament, before we can arrive at a decision of fact as to whether that which the word in question means has taken place or not, we must adopt some standard of what the word means. That involves a proposition of law as well as of fact. The county court judge, therefore, has two duties to perform; he must incidentally direct himself as to the meaning of the Act of Parliament, and then he must find, as a jury, whether that which the Act of Parlia-

ment means has taken place. It seems to me that the judge cannot find upon the question of fact without adopting some standard of the meaning of the Act. If then, the county court judge has misdirected himself as to the meaning of the Act, we ought to send the case back to him for a new trial. If the facts admit of only one inference, and the judge has so found that he must have misdirected himself as to the law, it would be right to send the case back to him. I do not hesitate to say that if he had found as a fact that there was an accident, I should have been of opinion that he had misdirected himself as to the meaning of accident."

Interpretation of statutes a question of law.—The meaning of words in an Act of Parliament is a question of law, not a matter of evidence, or to put the rule in other words, it is a question of law as to the interpretation of statutes. From this it follows that the view taken by magistrates of the application and construction of an Act of Parliament is a question of law.

The legal meaning—that is the construction which the court puts upon words and sentences in a statute—does not necessarily coincide with the ordinary meaning. An instance of this was afforded in *Powell v. Kempton Park Co.*, [1897] 2 Q. B. 242, where there was an elaborate discussion as to what was the meaning of the word "place" in a statute forbidding betting in any "house, office, room, or other place."

It has been held that in proceedings to recover expenses of paving, sewerage, etc., the question as to whether or not a particular lane or street is a "street" or "new street" within the meaning of such Acts as the Public Health Act, the Private Street Works Act,

or the Metropolis Management Acts, is one of fact to be decided as such by the justices (*Maude v. Baidon* (1883), 10 Q. B. D. 394; *R. v. Sheil* (1885), 49 J. P. 68; *Rishton v. Haslingdene Corporation*, [1898] 1 Q. B. 294; *Clerkenwell Vestry v. Edmondson* (1901), 18 T. L. R. 248).

Then, again, the courts assume to decide as matters of law, questions which might appear to the ordinary lay mind as questions of fact. For instance, in an accident to which contributory negligence would be a defence, the Court of Appeal would not be an appellate court upon questions of fact. The question of whether or not the plaintiff was guilty of contributory negligence, is one of fact, and for the inferior court to decide, but the Court of Appeal have assumed to decide whether the decision of the inferior court was reasonable. There has been in fact a legal rule evolved, which has converted a question of fact into one of law for the purpose of appeal. The rule may be stated thus: If there was evidence upon which the inferior court *might* find a certain fact, then the Court of Appeal will not entertain the appeal, but if there was not such evidence, then the Court of Appeal has jurisdiction to entertain the appeal on the point of law that the inferior court have not really performed the judicial duty cast upon them; or to put it in another way, it is a question of law whether there was or was not any evidence upon which the court of summary jurisdiction could find the fact.

The High Court has over and over again been called upon to decide as a question of law, what would ordinarily be declared to be a matter of fact. For example, definitions are often the subject of argument.

The ordinary layman would doubtless be of opinion that the question of whether or not certain conduct amounted to cruelty, was a question of fact.

In *Russell v. Russell*, [1897] A. C. 395, the House of Lords decided that conduct which the jury had found to be cruelty, was not cruelty.

In *Murphy v. Manning* (1877), 41 J. P. 104, the magistrates held that cutting the combs of cocks was not cruelty within the meaning of the Prevention of Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 2. The High Court allowed the appeal, and remitted the case to the magistrates to convict.

In *Veazey v. Chattle* (1902), 71 L. J. K. B., at p. 254, COLLINS, M.R., said that the judgments of Lords BRAMPTON and DAVY in *Hoddinott v. Newton Chambers & Co.* (*supra*), seemed to him (the Master of the Rolls) to be authority for the position that what would not appear to ordinary persons to be "scaffolding," may be "scaffolding" within the meaning of the Act.

On whom burden of proof lies, is a question of law.—It is a question of law on whom the burden of proof lies. In some modern statutes it is not uncommon to insert clauses to the effect that the burden of proof shall be on the defendant with reference to a negative, but when this is not done, it is a question of law upon whom the burden of proof lies (*Over v. Harwood* (1900), 69 L. J. 272).

Cases illustrating rules.—The following cases may be referred to as illustration of questions which the court have decided upon the basis that they involved a point of law.

Whether a bicycle was a carriage within the meaning of the Highway Act, was treated as a question of law in *Taylor v. Goodwin* (1879), 4 Q. B. D. 228; and see *Cannan v. Abingdon (Earl of)*, [1900] 2 Q. B. 66; 69 L. J. Q. B. 518.

In *Crick v. Theobald* (1895), 15 R. 514; 64 L. J. M. C. 216; 72 L. T. 807; 59 J. P. 502, the question turned upon the meaning of the words "every weighing instrument used for trade." Upon the findings of fact in the case, the High Court remitted the case with the expression of opinion that upon the findings of fact, the case fell within the meaning of the Weights and Measures Acts, 1878 and 1889.

In *Lavy v. London County Council*, [1895] 1 Q. B. 915; 64 L. J. M. C. 262, it was held that a mere wall may be a "building, structure, or erection" within s. 75 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102).

In *Wood v. London County Council* (1895), 64 L. J. M. C. 276; 59 J. P. 615, the question whether a carriage drive was laid out as a street for carriage traffic within the meaning of the London Building Act, 1894 (57 & 58 Vict. c. ccxiii), was held to be a question of law.

R. v. Evans, [1896] 1 Q. B. 228; 65 L. J. M. C. 29, was a decision which turned upon the meaning of words "ceased to reside."

The meaning of the term "domestic animals" came before the High Court in *Yates v. Higgins*, [1896] 1 Q. B. 166; 65 L. J. 31; 44 W. R. 335; 60 J. P.

88, and *Harper v. Marcks*, [1894] 2 Q. B. 319 ; 63 L. J. M. C. 167 ; 10 R. 335 ; 70 L. T. 804 ; 42 W. R. 605 ; 17 Cox C. C. 758 ; 58 J. P. 527.

In *Yates v. Higgins*, *supra*, it was held, affirming the decision of the court of summary jurisdiction, that a seagull was not a "domestic animal" within the meaning of the Cruelty to Animals Acts, 1849 and 1854 ; and in *Harper v. Marcks*, *supra*, it was held, affirming the decision of the court of summary jurisdiction, that lions used in a theatre are not domestic animals within the meaning of the Act.

In *Somerset v. Wade*, [1894] 1 Q. B. 574 ; 63 L. J. M. C. 126, it was held that a licensed person cannot be convicted under s. 13 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), of permitting drunkenness to take place on his premises, where the evidence shows that a person who was on the premises was in fact drunk, but that the licensed person did not know he was drunk.

The meaning of "allow" in s. 28 of the Merchant Shipping Act, 1876, came before the courts in *Massey v. Morris*, [1894] 2 Q. B. 412 ; 63 L. J. M. C. 185, where the High Court held, quashing the conviction that the owner of a British ship, which without his knowledge or consent is overloaded by the master, in breach of the provisions of s. 28 of the Merchant Shipping Act, 1876, is not responsible for the act of the master, so as to be liable to a penalty created by the section.

In *London County Council v. Humphreys*, [1894] 2 Q. B. 755 ; 63 L. J. M. C. 215, it was held that a bungalow constructed of wood and corrugated iron, erected on a piece of land for the purpose of exhibition

and sale, but not used or occupied, or intended to be used or occupied on the spot where it was erected, was not a "wooden structure or erection of a movable or temporary character," within the meaning of s. 13 of the Metropolis Management and Building Acts (Amendment) Act, 1882 (45 Vict. c. 14).

In *Truman, Hanbury, Buxton & Co. v. Kerslake*, [1894] 2 Q. B. 774 ; 63 L. J. M. C. 222, the High Court, on a case stated by quarter sessions, took a different view from the latter court as to the meaning of the word "owner" in s. 141 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

In *R. v. Mead* (1895), 64 L. J. M. C. 169, an application was made to the High Court for an order *nisi* for a *mandamus* calling upon one of the metropolitan police magistrates who had ordered the abatement of a nuisance under the Public Health Act, 1891, to state a case. The application was refused, the court holding that a building used during the day for religious services, and at night as a refuge for the destitute poor, but which contains no sleeping accommodation, is nevertheless a "house" within the meaning of the Act.

The question as to the meaning of the words "with a rod and line," in s. 7 of the Freshwater Fisheries Act, 1878 (41 & 42 Vict. c. 39), and s. 35 of the Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121), came before the High Court in *Combridge v. Harrison* (1895), 64 L. J. M. C. 175 ; 15 R. 327 ; 72 L. T. 592 ; 59 J. P. 198. The High Court took a different view from the court of summary jurisdiction, and remitted the case.

The true construction of the words "where they are required" in s. 49 of the Coal Mines Regulation Act,

1887 (50 & 51 Vict. c. 58), mean when they are necessary, and the question whether they are necessary is one of fact (*Gibbon v. Phillips* (1894), 64 L. J. M. C. 42).

In *Evans v. Owen and Jones*, [1895] 1 Q. B. 237 ; 64 L. J. M. C. 60, the court of summary jurisdiction stated a case for the opinion of the High Court, on the meaning of the word "tributary" in the Freshwater Fisheries Act, 1878. The justices had dismissed an information for unlawfully taking trout, on the ground that the streamlet from which the trout was taken, was not a tributary of the Severn. The High Court held otherwise, and remitted the case for conviction.

In *Raine v. Jobson*, [1901] A. C. 404 ; 70 L. J. K. B. 771, the House of Lords determined that a workman employed on a ship lying in a dry dock was employed on, in, or about a dock within the meaning of the Workmen's Compensation Act, 1897.

In *Redgrave v. Lloyd & Sons*, [1895] 1 Q. B. 876 ; 64 L. J. M. C. 155, the High Court, in allowing the appeal upon a case stated, held that the addition of the words "all dangerous parts of the machinery and" made by s. 6 (2) of the Factory Act, 1891 (54 & 55 Vict. c. 75), to the "every part of the mill gearing" in s. 5 (3) of the Factory Act, 1878 (41 & 42 Vict. c. 16), are to be read generally, and not only as applicable to parts of machinery *ejusdem generis* with those specified in the Factory Act, 1878, s. 5.

In *Pearson v. Belgrave Mills Co.*, [1896] 1 Q. B. 244 ; 65 L. J. M. C. 48, the High Court allowed the appeal, their decision turning upon the meaning of word "same" in the Factory and Workshop Act, 1878.

The case of *Collman v. Roberts*, [1896] 1 Q. B. 457 ; 65 L. J. M. C. 63, was decided upon the ground that the words "in or about a shop" is inclusive of time occupied upon the employer's business elsewhere than in the shop, and the case was remitted to the magistrate to convict.

In *R. v. Riley*, [1896] 1 Q. B. 309 ; 65 L. J. 74, it was held that a post office telegram accepting a wager is an "instrument" within the meaning of s. 38 of the Forgery Act, 1861 (24 & 25 Vict. c. 98).

The meaning of "allotment" within s. 4 of the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (50 & 51 Vict. c. 67), was decided in *Cooper v. Pearse*, [1896] 1 Q. B. 562 ; 65 L. J. M. C. 95.

The meaning of the word "creditor" in s. 13 (2) of the Debtors Act, 1869 (32 & 33 Vict. c. 62), was defined in *R. v. Hopkins*, [1896] 1 Q. B. 652 ; 65 L. J. M. C. 125.

In *Spiers and Pond v. Bennett*, [1896] 2 Q. B. 65 ; 65 L. J. M. C. 144, the Divisional Court decided that the facts constituted a "disclosure of the alteration" within the meaning of s. 9 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63).

In *Savoy v. Art Union*, [1896] A. C. 296 ; 65 L. J. M. C. 161 ; 74 L. T. 497 ; 45 W. R. 34 ; 60 J. P. 660, the House of Lords held that the word "voluntary" in 6 & 7 Vict. c. 36, s. 1, which gives exemption from rating to certain societies which are voluntary did not include the Art Union of London, and reversed the decision of the Court of Appeal.

The words "solicit, take, or receive" orders within

s. 17 of the Revenue Act, 1867 (30 & 31 Vict. c. 90), were held by the Divisional Court in *Killick v. Graham*, [1896] 2 Q. B. 196 ; 60 J. P. 534 ; 65 L. J. M. C. 180 ; 60 J. P. 534 ; 75 L. T. 29 ; 44 W. R. 669 ; 18 Cox C. C. 376, to include an agent who solicits persons to contribute money to a fund which is applied by way of payment for plate supplied by principal to such of the contributors as are determined by ballot.

In *Dickins v. Gill*, [1896] 2 Q. B. 310 ; 65 L. J. M. C. 187, it was held that the meaning of the term "unless he shows a lawful excuse" in s. 7 (c) of the Post Office (Protection) Act, 1884 (47 & 48 Vict. c. 76), was a matter of law. The magistrate had dismissed the case, being of opinion that the respondent had shown a lawful excuse. On a case being stated, the case was remitted for conviction.

In *Umfreville v. London County Council* (1897), 66 L. J. Q. B. 177 ; 75 L. T. 550 ; 18 Cox C. C. 464 ; 61 J. P. 84, it was held that a person carrying on the business of a farmer within the metropolitan police area, and keeping cows in a shed upon his premises as incidental to such business, is not "a person carrying on the business of a dairyman" within the meaning of s. 20, as defined by s. 141 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), so as to require a licence. The court of summary jurisdiction had previously held that the appellant did not come within the Act, and upon a case stated this decision was reversed.

In *Bradshaw v. Bradshaw*, [1897] P. 24 ; 66 L. J. P. 31 ; 75 L. T. 391 ; 45 W. R. 142 ; 61 J. P. 8, the justices held that they had no jurisdiction, as there was no desertion by the husband. The Probate, Divorce,

and Admiralty Division held there was desertion, and sent the case back for further consideration.

The meaning of the words "open for traffic on Sunday" in s. 51 of the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), came before the High Court in *Goldstein v. Vaughan*, [1897] 1 Q. B. 549 ; 66 L. J. Q. B. 380. The magistrate had convicted the appellant, but the High Court held that the facts did not bring the case within the words of the Act, and quashed the conviction.

In *London County Council v. Wood*, [1897] 2 Q. B. 482 ; 66 L. J. Q. B. 712 ; 77 L. T. 312 ; 46 W. R. 143 ; 61 J. P. 567, a case stated by a metropolitan police magistrate was remitted, the High Court taking a different view of the word "used" within the meaning of s. 32 of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77).

In *Stokes v. Arkwright* (1897), 66 L. J. Q. B. 845 ; 77 L. T. 400 ; 61 J. P. 775, the High Court allowed an appeal on a case stated by a court of summary jurisdiction, holding that the meaning of the word "person interested in the minerals of a mine" within s. 13 of the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), included the owner of the soil of an abandoned mine.

In *Lane v. Rendell*, [1899] 2 Q. B. 673 ; 69 L. J. Q. B. 8, the justices dismissed an information charging the respondent with unlawful possession of a weighing machine "false and unjust" within the meaning of the Weights and Measures Act, 1878 (41 & 42 Vict. c. 79). The High Court considered the weighing machine was false and unjust, and remitted the case.

In *Palmer v. Snow*, [1900] 1 Q. B. 725 ; 69 L. J. Q. B. 356 ; 48 W. R. 351, the High Court held that a hairdresser was not within s. 1 of the Sunday Observance Act, 1677 (29 Car. 2, c. 7), which provides that no "tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's Day." The court of summary jurisdiction had convicted the appellant, being of opinion that he was a tradesman, and upon a case stated the appeal was allowed. And see also *Reid v. Wilson*, [1895] 1 Q. B. 315 ; 64 L. J. M. C. 60.

In *Logsdon v. Trotter*, [1900] 1 Q. B. 617 ; 69 L. J. Q. B. 312, the Divisional Court decided that the meaning of a common lodging-house within the Common Lodging-Houses Acts, 1851, 1853, is a question of law.

In *Milner v. Great Northern Rail. Co.*, [1900] 1 Q. B. 795 ; 69 L. J. Q. B. 427, the county court judge held as a fact that a refreshment room at a railway station was part of the railway station. The High Court on appeal held that it was not.

In *Savoy Hotel v. London County Council*, [1900] 1 Q. B. 665 ; 69 L. J. Q. B. 274, the High Court held that the Savoy Hotel was a "shop" within the meaning of the definition contained in s. 9 of the Shop Hours Act, 1892 (55 & 56 Vict. c. 62).

In *Davis v. Harris*, [1900] 1 Q. B. 729 ; 69 L. J. Q. B. 232, the High Court took a different view of the meaning of the word "bedding" in section 147 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), from the magistrate. The latter had come to the conclusion that although a bedstead might under ordinary circumstances be included in the term "bedding," yet under

the circumstances the statute ought to be interpreted strictly and the bedstead allowed to be seized in execution. On a case being stated the Divisional Court remitted the case with the expression of opinion that the word "bedding" includes a bedstead in the section giving exemption from distress.

The expression "minerals" in s. 1 of the Quarries Act, 1894 (57 & 58 Vict. c. 42), includes gravel and sand taken by a railway company from land adjoining their railway for the purpose of maintaining and repairing the line (*Scott v. Midland Rail. Co.*, [1901] 1 K. B. 317; 70 L. J. Q. B. 228). "In this case it seems to me that the judgment we are asked to pronounce is upon a question of law. The justices dismissed the information upon the ground that sand and gravel are not minerals within the meaning of the Act of 1894. In my opinion they were wrong in point of law" (*ibid.*, KENNEDY, J., at p. 230, Law Journal Report).

In *Ellis v. William Cory & Son*, [1902] 1 K. B. 38; 71 L. J. Q. B. 72, the High Court reversed the decision of the judge of a county court upon the meaning of the word "wharf" within s. 23 of the Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37).

In *Smith & Son v. Kyle*, [1902] 1 K. B. 286; 71 L. J. Q. B. 16, the magistrates were of opinion that the appellants' bookstall at Merstham railway station, consisting of a board and trestles, constituted a shop within the meaning of the Shop Hours Act, 1892 (55 & 56 Vict. c. 62), and convicted the appellants. The King's Bench Division were of the contrary opinion, and allowed the appeal.

CHAPTER V.

COSTS.

Power of High Court to give costs.—The proceedings in the High Court having been determined in favour of the appellant or respondent the successful party will probably apply for his costs.

The question of costs is dealt with by s. 6 of the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43). The section provides that the court to which a case is transmitted under this Act shall hear and determine the question or questions of law arising thereon and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other orders in relation to the matter, and may make such order as to costs as to the court may seem fit ; and all such orders shall be final and conclusive on all parties : Provided always that no justice or justices of the peace who shall state and deliver a case in pursuance of this Act shall be liable to any costs in respect or by reason of such appeal against his or their determination (a).

When application for costs to be made.—Under the above section it is clear that the High Court have the power to award costs. This being so, numerous

(a) If the particular point of law upon which it is desired to have a case stated was not brought before the justices in the manner in which it ought to have been, and properly discussed, costs will not be allowed (*Ex parte Markham, ante, p. 22*).

questions will arise for the consideration of the applicant, the first of which will naturally be, When should the application for costs be made? Several cases are authority for the practice that the application should be made immediately after the court has given judgment in the applicant's favour. If the application is not then made the court may, and almost certainly will, refuse to give the successful party his costs. In *Bridenberg v. Roberts* (1867), L. R. 2 C. P. 292, the application for costs was not made until the following term, and the court, in refusing the costs, said they saw no reason for departing from the wholesome rule laid down in *Caswell v. Cook* (1862), 12 C. B. (N.S.) 242, that the court will not listen to an application for costs in the term after the decision. These two cases were followed in *Cook v. Montague* (1873), 28 L. T. (N.S.) 494. The rule applies with equal force to an application for a *mandamus* to state a case. In *Wakefield Local Board v. West Riding and Grimsby Rail. Co.* (1865), 6 B. & S. 794, a rule to state a case had been made absolute, but nothing was said about costs:—*Held*, that the party applying was not entitled to costs on taxing the costs of the case.

In *Wednesbury Local Board v. Stephenson* (1864), 33 L. J. M. C. 111; 10 Jur. 151; 9 L. T. 731; 12 W. R. 314, it was stated by the master of the Crown Office that as a matter of practice the rule of court embodying the judgment of the court on appeal against a magistrate's decision was always drawn up giving the costs of the appeal to the successful party unless the court gave some express direction to the contrary. This, however, is not now the practice. The costs must be specially asked for.

Successful party entitled to costs.—If the application for costs is made, as it should be, immediately after the court has given its judgment, then the general rule may be taken to be that under s. 6 *supra*, the costs will be given to the successful party. In *Youdan v. Crookes* (1858), 22 J. P. 287, Lord CAMPBELL, C.J., said : “ In these cases under the 20 & 21 Vict. c. 43, our judgment will always be with costs to the successful party unless we expressly order otherwise.” In *Davis v. Douglas* (1859), 23 J. P. 135 ; 28 L. J. M. C. 125 ; 32 L. T. 283, MARTIN, B., said : “ The settled rule is that the costs of the appeal shall abide the result of the appeal.” It is no answer to the application for costs to argue that the respondent appeared merely in support of the decision of the magistrate (*Venables v. Hardman* (1858), 1 El. & El. 79 ; 28 L. J. M. C. 33). In *Great Northern Rail. Co. v. Innett* (1877), 2 Q. B. D. 284 ; 41 J. P. 710 ; 46 L. J. M. C. 237 ; 25 W. R. 584, MELLOR, J., said : “ The ordinary rule is that parties who compel litigation must take care to put themselves in the right, and if they do not and the opposite party has to come to court and by means of affidavit satisfy the court of the irregularity, then the party in the wrong must pay the costs.” In this case, which followed *Diss v. Aldrich* (1877), 2 Q. B. D. 179 ; 41 J. P. 549 ; 46 L. J. M. C. 183 ; 36 L. T. 663, the court had refused to hear the appeal on the ground of want of jurisdiction. None the less the court considered it had the power to give costs, the respondent being entitled to his costs of opposing a case which the court of summary jurisdiction had no power to state. In *Venables v. Venables* (1858), 1 El. & El. 79 ; 28 L. J. M. C. 33, the court quashed the conviction and gave the appellant his

costs, the judgment of the court being that the costs ought to be paid by the party prosecuting.

It must, however, be borne in mind that the giving of costs is in the discretion of the court. In *Caswell v. Cook* (1862), 12 C. B. (N.S.) 242, the court refused the respondent his costs on the ground that the question was fairly arguable (b).

In *Stinson v. Browning* (1866), 1 H. & R. 263; 35 L.J. M. C. 152; L. R. 1 C. P. 321; 12 Jur. (N.S.) 262; 13 L. T. 799; 14 W. R. 395, where a conviction was granted upon an objection which was not brought to the notice of the magistrates, costs were not given to the successful party. See also *Ex parte Markham* (1870), 21 L. T. 748; 18 W. R. 258, *ante*, pp. 22, 56, 130.

What costs are usually given.—The application having been made for costs, the question will arise, What costs has the High Court the right to give? Does the sixth section of the Act (Summary Jurisdiction Act, 1857) include the costs of the proceedings before the magistrates as well as the costs of appeal to the High Court? The general rule may be stated to be, that where justices of petty sessions have stated a case, the Divisional Court, upon the hearing, does not give to the successful party the costs before the justices (*Slaughter v. Mayor of Sunderland* (1891), 55 J. P. 519). In *Cook v. Montague*, *ante*, p. 131, BLACKBURN, J., said, "If a strong case of vexation or oppression were brought before us we might order the respondent to

(b) This case must not be taken as an authority that the court will not give a respondent costs on dismissing an appeal when the question is fairly arguable. The head note in the case is misleading, as the decision appears to have partly turned on the fact that costs were not applied for until the following term.

pay the appellant's costs before the justices." And see *Newman v. Jones* (1886), 50 J. P. 373.

The costs of appeal include all necessary proceedings subsequent to the decision of the justices, and in *Glover v. Booth* (1862), 31 L. J. M. C. 270 ; 9 Jur. 76 ; 2 B. & S. 807, the court allowed the appellant's costs of preparing the original case, and of amending it on its being sent back to the magistrates to be restated.

When respondent does not appear.—If, however, the respondent does not appear, the court will, as a general rule, refuse to give the appellant his costs, unless there are exceptional circumstances in the case. In *Lee v. Strain* (1859), 28 L. J. M. C. 221 ; 5 Jur. (N.S.) 846 ; 7 W. R. 432, the judgment of the court was, that where no one appears on behalf of the respondent the practice was not to give costs. This rule was somewhat modified in *Wednesbury Local Board v. Stephenson* (1864), 33 L. J. M. C. 111 ; 10 Jur. (N.S.) 151 ; 9 L. T. 731 ; 12 W. R. 414, *ante*, p. 131, but the court, while in that case giving the appellant his costs, notwithstanding the respondent had not appeared, declined to lay down any general rule.

In *Halse v. Alder* (1874), 38 J. P. 407, the respondent did not appear, but the court gave the appellant his costs. In giving judgment, LUSH, J., said, in answer to the objection that it was not usual to give costs against a respondent who did not appear, "It is not a universal rule, but in exceptional cases it is done. This, however, is a good exception. This was a hard charge to make under the Larceny Act, and there was nothing to support the charge."

In *Greenbank v. Sanderson* (1884), 49 J. P. 40, the appellant obtained his costs, though the respondent did

not appear, apparently on the ground that it was necessary to come to the High Court to have a wrong judgment reversed ; and see *Soloman v. St. Mary's, Islington* (1900), *Times*, February 16th.

Wednesbury Local Board v. Stephenson (1864), *ante*, p 134, was followed in *Shepherd v. Folland* (1885), 49 J. P. 165. In neither *Shepherd v. Folland*, or *Greenbank v. Sanderson*, *supra*, were there any circumstances sufficiently exceptional to bring them within the rule laid down by LUSH, J., in *Halse v. Alder*, *supra*.

In *Smith v. Butler* (1885), 16 Q. B. D. 349 ; 50 J. P. 260 ; 34 W. R. 417, *ante*, the court declined to give the appellant his costs, the respondent not being represented. The cases cited are conflicting, but the rule as laid down by LUSH, J., in *Halse v. Alder*, *supra*, may probably be taken as a statement of the practice which is in general to refuse the appellant his costs, where the respondent does not appear, but to give costs against the respondent in vexatious and exceptional cases notwithstanding he takes no part in the appeal.

The respondent is entitled to his costs if the appeal is dismissed, and as he has been brought before the court to defend the verdict of the Court of Summary Jurisdiction, he is entitled to his costs, though the appellant abandon the appeal.

In *Crowther v. Bault* (1884), 13 Q. B. D. 680 ; 3 W. R. 150 ; 49 J. P. 135, a case was remitted to be restated, and the appellant then abandoned it. It was held that the High Court had jurisdiction to give respondent his costs. See also *Great Northern and London and North Western Joint Committee v. Inett*, and *Diss v. Aldrich*, *ante*, p. 132.

The crown is included in general rule.—It was held in *Moore v. Smith* (1859), 1 El. & El. 597 ; 28 L. J. M. C. 156, that s. 6 included the crown as to costs, and the court gave the respondent, who was one of her Majesty's officers of excise, his costs. This case is authority for the rule that costs may be awarded for or against the crown, whether directly or indirectly a party to the information. Costs are given against the police, when they set the law in motion. For instance, in *Copley v. Burton* (1870), L. R. 5 C. P. 489 ; 39 L. J. M. C. 141, an information was preferred by William Burton, sergeant of police, under the Licensing Act ; the appellant was convicted by the magistrates, but on appeal to the High Court the conviction was quashed.

On an application for costs, WILLES, J., said, " We desire it to be distinctly understood, that, in future, in quashing the conviction in these cases, we shall do so with costs.

The justices have no right to appear on the hearing of the appeal, and the statute (Summary Jurisdiction Act, 1857, s. 6), does not give the court power to award costs in their favour (*Luton Local Board v. Davis* (1860), 2 El. & El. 678 ; 29 L. J. M. C. 173 ; 6 Jur. (N.S.) 580).

We have seen, *ante*, p. 93, that where the respondent dies the court may yet hear the appeal, and in *Garnsworthy v. Payne* (1870), 35 J. P. 21, where the respondent died, the court allowed a company, whose officer the respondent had been, to be heard, on the understanding that the company should be in the same position as the respondent would have been regarding costs.

Justices not liable for costs when case stated.—

The latter part of s. 6 of the Summary Jurisdiction Act, 1857, enacts that no justice or justices of the peace who shall state and deliver a case in pursuance of this Act, shall be liable to any costs in respect or by reason of such appeal against his or their determination. Notwithstanding this section, in *Heywood v. Whitehead* (1897), 76 L. T. 781, costs were given against magistrates who appeared, and were allowed to oppose an appeal.

The case can hardly be taken as an authority, and in the report of the case there is no mention made of s. 6, *supra*. Moreover, the fact that the justices were allowed to appear at all, still further weakens the case, as this was irregular and contrary to the settled practice of the court. If, however, the High Court remit the case for conviction, and the justices do not then convict, they may be liable for the costs incurred in obtaining a *mandamus* to compel them to convict (*R. v. Haden Corser, ante*, p. 96).

Justices may be liable for costs when case refused.—

If justices refuse to state a case on the ground that the application is frivolous when there is a point of law in question, they may be liable for the costs of a rule directing them to state a case. In *R. v. Watson and Others, ante*, p. 45, there was a rule calling on justices to state a case as to a point of law. A child had been ordered by a schoolmaster of a school board to learn home lessons, and the parent having objected gave notice that the child had no means of learning them. The master next day detained the child half an hour later in order to learn the lessons. For the

detention the master was charged with assault, and beside the detention, which was admitted, the master had put his hand on the child's head, but had caused no pain. The justices holding there was no assault in law, dismissed the summons, and refused to state a case as frivolous—*Held*, there being a point of law as to the legality of the assault or detention the justices were bound to state a case, and the rule was made absolute against the justices with costs.

In *R. v. Bell and Others, Ex parte Flinn & Sons*, 15 T. L. R. 487, a licensing case, the justices had refused to state a case and had not given a certificate that they considered the application frivolous.' In ordering the rule to be made absolute with costs, Mr. Justice RIDLEY said : "Section 4 of 20 & 21 Vict. c. 43, provided that if the justices be of opinion that the application is merely frivolous, but not otherwise, they may refuse to state a case; and shall on the request of the appellant sign and deliver to him a certificate of such refusal. The words were clear that unless the application was in their opinion frivolous, the justices must state a case on application. In this case the justices were in this dilemma—they ought either to have stated a case or to have given a certificate that the point was frivolous. They had done neither." Subsequently it was agreed that the order for costs should be on condition that the justices did not state the case within a week.

In *Palmer v. Thatcher* (1878), 47 L. J. M. C. 54, *ante*, a case where a rule *nisi* for a *certiorari* had been obtained after an application had been made for a special case, COCKBURN, L.C.J., in quashing the conviction, said : "As regards the question of costs,

I was certainly prepared on the first statement of facts by Mr. POLAND to say that the costs relating to the *certiorari* ought to be borne by the appellant as being an altogether unnecessary proceeding on his part. But when our attention is called to the fact that five months were allowed to elapse before the case, of the simplest possible character, was stated (it might have been stated in an hour), and when in addition to this circumstance, the appellant was not only brought before the justices with a view to make him liable for a penalty for the sale of wine without a license under the Act of 1872, but has actually had a large quantity of wine taken and carted away from his premises, I think that such a proceeding was arbitrary and uncalled for, and under the circumstances that while we say in the exercise of our discretion we will not make the rule for the *certiorari* absolute the rule ought to be discharged without costs."

Costs where preliminary objection upheld.—The costs are in the discretion of the court whether the case was duly heard, struck out, or abandoned. And the rule is that where a preliminary objection is taken and upheld that the appeal is dismissed with costs.

Order for costs not appealable.—Section 49 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), enacts that "No order made by the High Court or any judge thereof, by the consent of parties, or *as to costs only*, which by law are left to the discretion of the court, shall be subject to any appeal, except by leave of the court or judge making such order." It is doubtful whether there can

be any appeal as to costs, in the face of this section. It has been stated than when the order as to costs involves a question of law or principle, that it is subject to appeal (*per* JAMES, L.J.: *Re Rio Grande, etc. Co.* (1877), 5 Ch.D. 282). And see *Ex parte Waddell* (1877), 6 Ch. D. 328; *The City of Manchester* (1880), 5 P. D. 221; *Cockle v. Treacy*, [1896] 2 I. R. 267; *Re Raynes Park Golf Club*, [1899] 1 Q. B. 961; *Bew v. B.*, [1899] 2 Ch. 467. See, however, the judgment of LINDLEY, M.R., in *Adlington v. Conyngham*, [1898] 2 Q. B. 494.

The House of Lords, with regard to s. 49, have decided that an appeal must not be brought for costs, or in relation to costs only (*Metropolitan Asylum District v. Hill and Others* (1880), 5 App. Cas. 582; 49 L. J. Q. B. 745); and see notes to s. 49, Judicature Act, 1873, in the Annual Practice.

THE STATUTORY FEES PAYABLE BY THE APPELLANT TO THE JUSTICES' CLERK ARE :

	£	s.	d.
For drawing the case (c)	0	10	0
If more than five folios of ninety words each, for every additional folio	0	1	0
On the recognizance	0	5	0
For every enlargement or renewal thereof	0	2	6
For certificate of refusal of case	0	2	0
Paid stamp on setting down and filing recognizance...	1	2	6
Making three copies for judge, at 4d. a folio	—		
Attending lodging	0	6	8

(c) The High Court will not award justices the costs of employing counsel to draw the case (*Luton Local Board of Health v. Davis* (1860), 6 Jur. (N.S.) 582).

APPELLANT'S COSTS OF APPEAL FROM A CONVICTION BY A
COURT OF SUMMARY JURISDICTION, TO THE KING'S BENCH
DIVISION, UNDER THE SUMMARY JURISDICTION ACTS, 1848
AND 1879.

	£	s.	d.
Instructions on appeal	0	6	8
Drawing notice requiring justices to state a case ...	0	3	4
Copy and journey to serve A. B., Esq....	0	5	0
Mileage	—		
Copy and service on C. D., Esq.	0	5	0
Mileage	—		
Attending before magistrates on appellant being bound over	0	6	8
Copy draft case to keep	0	6	8
Copy case for respondent, at 4d. per folio ...	—		
Service on respondent	0	5	0
Paid justices' clerk's fees thereon	—		
Attending setting down appeal for argument ...	0	6	8
Close copy	0	1	0
Bill of costs and copies at 1s. per folio	—		
Attending for appointment to tax	0	3	4
Copy and service, bill of costs	0	4	0
Attending taxing same	0	6	8
Paid taxing	1	1	0
Sittings fee	—		
If not agency	0	15	0

TRINITY SITTINGS, 1902.

Instructions to counsel to support appeal	0	6	8
Drawing brief and copy, at 1s. 4d. per folio ...	—		
Copy case for counsel	—		
Fee to him and clerk	—		
Attending him	0	6	8
Attending searching list of appeals	0	6	8
Attending court on argument, appeal allowed with costs	0	13	4
Attending drawing up order	0	3	4
Paid	—		

RESPONDENT'S COSTS ON A SPECIAL CASE STATED BY JUSTICES
UNDER THE SUMMARY JURISDICTION ACTS, 1848 AND 1879.

	£	s.	d.
Instructions to support conviction	0	6	8
Having been served with a copy of the case, as stated and signed by justices, perusing same (or 4d. per folio)	0	6	8
Attending to search how case stood in the list ...	0	6	8
Instructions for brief	0	6	8
Drawing same and copy (or at 1s. 4d. per folio) ...	0	6	8
Copy case and observations for counsel	0	6	8
Fee to Mr. — and clerk to argue	—		
Attending him	0	6	8
Attending consultation	0	13	4
Paid Mr. — consultation fee and clerk	2	7	0
Attending appointing consultation	0	6	8
Sittings fee	0	15	0

MICHAELMAS SITTINGS.

Refresher to Mr. — and clerk	2	4	6
Attending him	0	6	8
Attending to search how case stood in list	0	6	8
Attending court on argument of case, judgment for respondent with costs... ..	0	13	4
Attending to draw up order	0	3	4
Paid fee	—		
Copy for service	0	1	0
Drawing bill of costs and copy for master	0	3	4
Copy for appellant's solicitor	0	1	8
Notice to tax copy and service	0	4	0
Attending taxing	0	6	8
Paid taxing	—		
Sittings fee	0	15	0

APPENDIX

OF STATUTES AND PRECEDENTS.

STATUTES.

SUMMARY JURISDICTION ACT, 1857.

(20 & 21 VICT. c. 43.)

*An Act to Improve the Administration of the Law so far as respects
Summary Proceedings before Justices of the Peace.*

[17th August 1857.]

“Whereas it is expedient that provision should be made for obtaining the opinion of a superior court on questions of law which arise in the exercise of summary jurisdiction by justices of the peace”: Be it enacted as follows :

1. *Interpretation.*—In the interpretation and for the purposes of this Act, the following words shall have the meaning herein-after assigned to them ; that is to say,

“Superior courts of law” shall for England mean the supreme courts of law at Westminster, and for Ireland the supreme courts of law at Dublin :

“Court of Queen’s Bench” shall mean for England the Court of Queen’s Bench at Westminster, and for Ireland the Court of Queen’s Bench at Dublin.

2. *Justices on application of a party aggrieved to state a case for the opinion of the Superior Court.*—After the hearing and determination by a justice or justices of the peace of any information or complaint, which he or they have power to determine in a summary way by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting

forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying; and such party, hereinafter called the appellant, shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called the respondent.

3. *Security and notice to be given by the appellant.*—The appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognizance before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled; which fees, except such as are already provided for by law, shall be according to the schedule to this Act annexed marked A, until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute eleventh and twelfth Victoria, chapter forty-three, section thirty; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed.

4. *Justices may refuse a case where they think the application frivolous.*—If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal: Provided, that the justice or justices shall not refuse to state a

case where application for that purpose is made to them by or under the direction of her Majesty's Attorney-General for England or Ireland, as the case may be.

5. *Where the justices refuse, the Court of Queen's Bench may by rule order a case to be stated.*—Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of Queen's Bench, upon an affidavit of the facts, for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet; and the justice or justices, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

6. *Superior Court to determine the questions on the case.*—The court to which a case is transmitted under this Act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as to the court may seem fit; and all such orders shall be final and conclusive on all parties: Provided always, that no justice or justices of the peace, who shall state and deliver a case in pursuance of this Act, shall be liable to any costs in respect or by reason of such appeal against his or their determination.

7. *Case may be sent back for amendment.*—The court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment; and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

8. *Jurisdiction of judge at chambers.*—The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this Act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time.

9. *After the decision of Superior Court, justices may issue warrants.*—After the decision of the superior court in relation to any case stated for their opinion under this Act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended, or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against ; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order, by reason of any defect in the same respectively.

10. *Certiorari not to be required for proceedings under this Act.*—No writ of certiorari or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated under this Act, or otherwise for obtaining the judgment or determination of the superior court on such case under this Act.

11. *Rules for proceedings.*—The superior courts of law may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned.

12. *“Justices” to include a stipendiary magistrate.*—The words justice or justices” in this Act shall include a magistrate of the police courts of the metropolis, and any stipendiary magistrate.

13. *Recognizances how to be enforced.*—In all cases where the conditions, or any of them, in the said recognizance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices, shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed and transmit the same to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances forfeited at quarter sessions may now by law be enforced ; and such certificate shall be deemed sufficient prima facie evidence of the said recognizance having forfeited : Provided that where any such recognizances shall have been

taken in England before a magistrate of the police courts of the metropolis, or by any stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied, upon such recognizance being forfeited, and on non-payment thereof, together with the costs of the proceedings to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of an Act passed in the second and third years of the reign of her present Majesty, intituled "An Act passed for regulating the Police Courts in the Metropolis," and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this Act, in as ample a manner as if they had been herein re-enacted and made part of the same.

14. *No appeal to quarter sessions.*—Any person who shall appeal under the provisions of this Act against any determination of a justice or justices of the peace, from which he is by law entitled to appeal to the quarter sessions, shall be taken to have abandoned such last-mentioned right of appeal, finally and conclusively, and to all intents and purposes.

15. *Extent of Act.*—This Act shall not extend to Scotland.

REVIEW OF JUSTICES DECISIONS ACT, 1872.

(35 & 36 VICT. c. 26.)

An Act to amend the Practice of the Courts of Law with respect to the Review of the Decisions of Justices. [18th July 1872.]

"Whereas ex parte proceedings are frequently taken in the superior courts of common law at Westminster to bring under review the decisions of justices of the peace acting both in and out of sessions, and there is no fund at the disposal of such justices to defray the expense of appearing by counsel to support their decisions :

“And whereas it is expedient that such justices should, without expense to themselves, have an opportunity in such cases of informing the court of the grounds of their decision, and of all material facts bearing upon the same:” Be it enacted as follows:

1. *Short title.*]—This Act may be cited as “The Review of Justices Decisions Act, 1872.”

2. *Affidavit of ground of justice's decision.*]—Whenever the decision of any justice or justices is called in question in any superior court of common law by a rule to show cause or other process issued upon an ex parte application, it shall be lawful for any such justice to make and file in such court an affidavit setting forth the grounds of the decision so brought under review, and any facts which he may consider to have a material bearing upon the question at issue, without being required to pay any fee in respect of filing such affidavit or any stamp duty thereupon, and such affidavit may be forwarded by post to one of the masters of the court for the purpose of being so filed.

3. *Consideration of affidavit.*]—Whenever any such affidavit has been filed as aforesaid, the court shall, before making the rule absolute against the justice or justices, or otherwise determining the matter so as to overrule or set aside the acts or decisions of the justice or justices to which the application relates, take into consideration the matters set forth in such affidavit, notwithstanding that no counsel appear on behalf of the said justices.

SUMMARY JURISDICTION ACT, 1879.

(42 & 43 VICT. C. 49.)

* * * * *

33. *Appeal from court of summary jurisdiction by special case.*]—
(1.) Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case setting forth the facts of the case and the grounds

on which the proceeding is questioned, and if the court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

(2.) The application shall be made and the case stated within such time and in such manner as may be from time to time directed by rules under this Act, and the case shall be heard and determined in manner prescribed by rules of court made in pursuance of the Supreme Court of Judicature Act, 1875, and the Acts amending the same; and, subject as aforesaid, the Act of the session of the twentieth and twenty-first years of the reign of her present Majesty, chapter forty-three [S. J. Act, 1857], intituled "An Act to improve the administration of the law so far as respects summary proceedings before justices of the peace," shall, so far as it is applicable, apply to any special case stated under this section, as if it were stated under that Act:

Provided that nothing in this section shall prejudice the statement of any special case under that Act.

*

*

*

*

*

PRECEDENTS.

NOTICE TO JUSTICES TO STATE A CASE.

To A. B. and C. D., Esquires, two of his Majesty's justices of the peace, acting in and for the of , and to , Esquire, clerk to the court of summary jurisdiction for the said [petty sessional division, *or as the case may be*].

In the matter of a proceeding, information, or complaint wherein E. F. was the complainant, and I, the undersigned, was defendant, heard before and determined by you at on the day of .

I hereby give you notice that I, being a person aggrieved and dissatisfied with your determination of the said [proceeding, information, *or complaint as the case may be*], as being erroneous in point of law [*or in excess of jurisdiction*], do require you to state and sign a case setting forth the facts and the grounds of your determination upon the hearing of the said [proceeding,

information, or complaint], in order that I may take the opinion thereon of the King's Bench Division of his Majesty's High Court of Justice.

Dated this day of 19 .

G. H.

[Place of abode.]

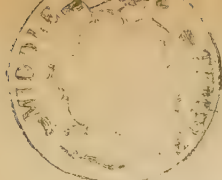
[If it be the complainant who requires a case the above form may be altered accordingly.]

FORM OF RECOGNIZANCE FOR SPECIAL CASE.

County of , } Be it remembered that on day of
 to wit. } in the year of our Lord one thousand nine
 hundred and , personally came before the under-
 signed , justices of the peace for the county of , and
 severally acknowledged themselves to owe to our lord the King
 the several sums following, that is to say, the said the sum
 of , and the said the sum of , and the said
 the sum of each, of good and lawful money of Great
 Britain, to be made and levied on their several goods and chattels,
 lands, and tenements respectively, to the use of our said lord the
 King, his heirs and successors, if he, the said , fail in the
 condition hereon endorsed.

CONDITION.

The condition of the above recognizance is such that if the
 said shall prosecute without delay a certain special case
 to be stated by the court of summary jurisdiction sitting at
 , in the petty sessional division of , in the county
 of , for the opinion of the Divisional Court of the High
 Court of Justice, he, the said [appellant], having on the
 day of , applied in writing to the said court of summary
 jurisdiction sitting at , in the petty sessional division of
 , in the county of , that he, the said , desired
 to question a certain conviction [order, determination, or other
 proceeding, as the case may be] by the said court of summary
 jurisdiction, for that [here state the offence and date, or, in the case



of an order, the substance] on the ground that it is erroneous in point of law [or in excess of jurisdiction].

And if the said submit to the judgment of the said High Court of Justice, and pay such costs as may be awarded by the same thereupon, then the said recognizance of the said several persons so acknowledging themselves as aforesaid, to be void, or else to stand in full force and virtue.

Taken and acknowledged the day and year first above written at , before me,

(Signed) .

FORM OF CASE

UNDER 20 & 21 VICT. C. 43 AND 42 & 43 VICT. C. 49, s. 33 (a).

In the High Court of Justice,
King's Bench Division.

Between

and

, *Appellant*,

, *Respondent*.

(1.) This was an information [or complaint] preferred by A. B. against C. D., for that [*here state shortly the substance of the information or complaint*].

(2.) And after hearing the parties and the evidence adduced by them, the undersigned, being his Majesty's justices of the peace in and for the petty sessional division of , in the county of , and sitting as a court of summary jurisdiction at , in the said county on the day of , 190 , did thereupon convict the appellant [*or, in the case of an order, setting out shortly the adjudication of the justices*].

(3.) And the appellant alleging that he is a person aggrieved at the said conviction [or dissatisfied with the said determination or order or other proceeding] as being erroneous in point of law [or in excess of jurisdiction] has duly applied to us to state and sign a case.

(a) The statute provides no form for the case itself, and all that is required is that it should be clearly and intelligibly stated.

(4.) Wherefore we, the justices aforesaid, in compliance with the said request and in pursuance of the statute in such case made and provided, do hereby state and sign the following case for the opinion of the said court.

[When the justices have declined to state a case, and the court has ordered them to state one, insert instead of paragraph (4) :

(4.) Wherefore we, the justices aforesaid, being of opinion that such application was frivolous, declined to state a case.

(5.) And whereas on the day of 19 , a Divisional Court of the King's Bench Division of the High Court of Justice made absolute a rule calling upon us to state such a case, therefore in obedience to such order we do hereby state and sign this case.]

CASE.

At the hearing of the said information [*or* complaint] it was proved [*here set out the facts seriatim which the justices consider were proved, and the circumstances which gave rise to the point intended to be submitted for the opinion of the High Court*].

(5.) And whereas we the said justices, being of opinion [*here state the grounds of the judgment*], did adjudicate and determine [*set out shortly the adjudication of the justices*].

QUESTION.

(6.) The question upon which the opinion of the said court is desired is, whether we, the said justices, upon the above statement of facts, came to a correct decision in point of law, and if not, what should be done in the premises.

Signed the day of 19 .

Justices.

RESTATEMENT OF SPECIAL CASE

(To be annexed to the Original Case).

Whereas by an order of the King's Bench Division of the High Court of Justice dated the day of 19 , it was ordered that the above special case should be remitted to us for the purpose of amendment.

Now we, the undersigned , justices of the peace for , by whom the said case was stated and signed, do hereby restate the said case as follows :

[*Here insert the amendment as required by the order of the High Court.*]

NOTICE OF APPEAL.

To A. B. [*the respondent*].

Take notice that I, the undersigned C. D., being the defendant named in a conviction [order, determination, or other proceeding] made by E. F. and G. H., Esquires, two of his Majesty's justices of the peace, acting in and for the county of , at , in the said county, have required the said justices, pursuant to the statutes 20 & 21 Vict. c. 43 and 42 & 43 Vict. c. 49, s. 33, to state and sign a case setting forth the facts and the grounds of their determination, whereupon they made the said conviction [order, determination, or other proceeding], to the end that I might take the opinion thereon of the King's Bench Division of the High Court of Justice. And further take notice that I have duly entered into a recognizance as required by the said statute. And further take notice that in pursuance of my requisition, the said justices have stated and signed a case for the opinion of the said court, a copy of which case is annexed hereto.

Dated the day of , 190 .

C. D.

[*Place of abode.*]

FORM OF AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR AN ORDER TO JUSTICES TO STATE A CASE.

In the High Court of Justice,
King's Bench Division.

I [*name*] of [*address*] [*occupation*] make oath and say :

1. At a petty sessions held at , in the petty sessional division of , in the county of , on the day of 19 , A. B. and C. D., two of his Majesty's justices of the peace for the said county sitting as a court of summary jurisdiction heard and determined a [*information or complaint as the case may be*] [*laid or preferred*] by [*name and address of the respondent*].

2. The said [*information or complaint*] was [*laid or preferred*] under [*set out the statute or other authority under which the information or complaint is laid or preferred*].

3. On the hearing of the said [information or complaint] I contended [or it was contended on my behalf] that [*here set out shortly the point or points of law upon which the application is based*].

4. The said justices rejected my contention that [*set out point of law as above*] and [*here set out the determination of the court of summary jurisdiction, whether it be a conviction order or other proceeding of the justices*].

5. Being dissatisfied with such conviction [order, determination, or other proceeding] as being erroneous in point of law, I applied to the said justices to state a case setting forth the facts and grounds of such determination for the opinion of this honourable court pursuant to the statutes in that behalf, but the said justices refused my application, certifying that in their opinion it was frivolous.

6. Copies of such application and certificate are now produced and shown to me and marked as exhibits "A." and "B." respectively to this my affidavit.

7. I respectfully submit that the point of law raised by me before the said justices was not frivolous, but was and is a fit and proper point to be considered by this honourable court on a special case, and I ask that the said justices be ordered to state a special case setting forth the facts proved before them upon the hearing of the said information [complaint or other proceeding] and the contention raised by me and the grounds of their said determination.

The above form is given on the supposition that the defendant is the appellant. Where the prosecutor is the appellant the necessary alteration in the language used can be made. Further, if the application is made by the prosecutor on the dismissal of the information, complaint, or other proceeding, the following paragraph should be added (see Crown Office Rule 76).

8. This application is made at my instance as prosecutor.

INDEX.

A.

- ABANDONING APPEAL TO QUARTER SESSIONS,
when case stated, 23.
- ABSTRACT QUESTIONS,
High Court will not answer, 95.
- ACQUITTAL,
case may be stated on, 12.
- ACTS UNDER WHICH CASE IS STATED, 2.
- AFFIDAVIT,
filing of, by justices under review of Justices' Decisions
Act, 91.
what it should contain, 56.
in support of rule *nisi*, 56.
may be filed by leave when dispute as to facts before
magistrates, 69.
must be entitled in name of party, 76.
- AGGRIEVED PERSON,
who is, 1, 3, 10.
grievance must be peculiar and immediate, 10.
- ALTERNATIVE APPEAL,
where lies, 25.
- ALTERNATIVE REMEDY, 8.
- AMENDMENT OF CASE, 67.
may be remitted to magistrates for, 93.
power of justices to amend case, 80.
when application for, should be made, 71.
- ANIMALS,
cutting cocks' combs, 120.
meaning of term "domestic animals," 121, 122.

INDEX.

APPEAL

- abandoning, costs, 135.
- by case deprives appellant of right of appeal to quarter sessions, 23.
- conditions precedent to right of, to High Court, 35.
- frivolous, 52.
- from court of summary jurisdiction lies only on point of law, 20, 107.
 - divisional court to Court of, 97.
 - none where cause or matter is criminal, 97.
- mode of, from divisional court to Court of Appeal, 105.
- order in steps of, 76.
- parties to, death of one of, 93.
- personal service of notice of, 83.
- power to state case without going to sessions, 24.
- right of, to quarter sessions, does not take away right to case, 25.
- time prescribed to be strictly adhered to, 40, 41.
- to be heard by divisional court, 87.
- when case, proper mode of, 29.

APPEALS,

- two pending, 1 n.

APPELLANT,

- any person aggrieved, 1.
- entitled if appeal allowed to costs of preparing case, 134.
- neglect to lodge case, 78, 83.
- proceedings on default by, 75.
- right of, to begin, 92.
- when, has done all in his power to comply with statute, 75.

APPLICATION

- to High Court for amendment, when, should be made, 71, 72.
 - order to magistrates to state case, 54.
- state case to be in writing, 37, 38.
 - left with clerk to magistrates, 37, 50.
 - made within seven clear days, 37.
- strike case out of paper, 76.

INDEX.

B.

BAIL,

refusal to admit to, 100.

BAINES' ACT (12 & 13 Vict. c. 45)...24.

BOOKS, PAPER, 89.

BURDEN OF PROOF,

on whom lies, is a question of law, 120.

BY WHOM CASE IS STATED, 65.

C.

CASE STATED FOR OPINION OF SUPERIOR COURT.

And see SPECIAL CASE.

20 & 21 Vict. c. 43...2, 3.

Acts relating to, 2.

affidavits, 56.

must be entitled in names of parties, 76.

after decision of Superior Court justices may issue warrants, 96.

alternative form of appeal, 25.

amendment of case, 67.

appeal from court of summary jurisdiction by special case,
1—3.

to quarter sessions, 25.

abandoned, 23.

appellants not allowed to appeal to quarter sessions, 23.

application for case to High Court to be by motion for an order *nisi*, 54.

to be made within seven clear days, 37.

Sunday counts as one day, 41.

state case to be in writing, 37, 38.

by whom case is stated, 65.

can be stated on application to enforce poor and local rates, 7.

cannot be stated on question of fact, 108, 109.

case may be sent back for amendment, 93.

must be lodged at Crown Office, 88.

stated on improper reception of evidence, 47.

to be stated within three calendar months, 59.

INDEX.

CASE STATED FOR OPINION OF SUPERIOR COURT—

continued.

- certiorari* not required, 34.
- conditions precedent, 35.
- costs of argument before Superior Court, 130.
- criminal cause or matter, 97.
- death of respondent, 93.
- definition of court of summary jurisdiction, 4, 5.
- disagreement as to facts on case from court of summary jurisdiction, 68.
- friendly society disputes, 8, 12.
- if point of law case cannot be refused, 45.
- justices may refuse case when application frivolous, 43, 52.
 - no right to be heard in support of their decision, 90.
 - not liable for costs, 136.
 - to include stipendiary magistrate, 4 n.
- no case to be stated when justices decline to hear, 13.
 - but may do so when they hear and dismiss, 13, 14.
- non-appearance of respondent, 93.
- notice to respondent, 73, 75, 76.
 - who is respondent, 65.
- oral application when case refused, 38.
- points not raised before justices, 22.
- points of law not raised before justices, 21.
- point reserved from quarter sessions, 25.
- poor and local rate, 6.
- power to state case, 1.
- personal service, 83.
- recognizance to be given by the appellant, 57.
 - when entered into, 57, 58, 60—65.
- recognizances, how enforced, 58.
- remitting case to justices, 93.
- service of notice on justices, 37.
 - copy of application to be left with clerk to magistrates, 37, 50.
 - time expiring on Sunday, 42, 73.
- service on solicitor, 84, 85.
- stating case after notice of appeal to quarter sessions, 24.
 - on validity of rates, 6—8.
- Summary Jurisdiction Act, 1879, s. 33...3.
- Superior Court may make rules, 87.

INDEX.

CASE STATED FOR OPINION OF SUPERIOR COURT-- *continued.*

- Supreme Court of Judicature Acts, 86, 87, 91, 98, 105.
- to be stated on point of law only, 107.
- two appeals at the same time, 1, 29.
- what costs usually given by Superior Court, 133.
- when appeal lies from King's Bench Division, 97.
 - application for amendment to be made, 71, 72.
 - "case" can be stated, 3, 6, 17, 20, 25, 107.
 - justices not bound to state case, 20.
 - refused King's Bench may by rule order case to be stated, 43.

CERTIFICATE

- of refusal to state case, 52, 56.

CERTIORARI

- not required to bring case before Superior Court, 34.

CHILDREN,

- power to enter into recognizances, 65.

CIVIL OR CRIMINAL CAUSE OR MATTER,

- test as to what constitutes, 104.

CLEAR DAYS,

- meaning of, 41.

CLERK OF COURT OF SUMMARY JURISDICTION,

- fees payable to, 140.
- service of notice on, 37, 50.

CONDITIONS

- precedent to appeal, 35.

CONSENT OF PARTIES,

- when case may be stated by, 24.

CONVICTION

- under wrong statute, 95.

COSTS IN HIGH COURT,

- Crown included in general rule, 136.
- justices not liable for, 137.
- on case abandoned, 135.
- order for, not appealable, 139.

INDEX.

COSTS IN HIGH COURT—*continued.*

- successful party entitled to, 132.
- what are usually given, 133.
- when application for, should be made, 130.
- respondent does not appear, 134.

COUNSEL,

- number of to be heard on argument, 89.

COURT OF APPEAL,

- mode of appeal from divisional court to, 105.
- when appeal lies from divisional court to, 97, 99.

COURT OF SUMMARY JURISDICTION,

- appeal from by special case, 1.
- definition of—
 - by House of Lords, 5.
 - Interpretation Act, 4.
- what is, 3.

CRIMINAL CAUSE OR MATTER,

- no appeal from divisional court in, 97, 99.
- test as to what constitutes, 104.

CROWN

- included in general rule as to costs, 136.

CROWN OFFICE RULES, 43, 86.

D.

DATE

- of hearing of case, 89.

DEATH

- of one of the parties to appeal, 93.

DECISION OF HIGH COURT,

- after, justices may issue warrant, 96.

DECLINE TO HEAR,

- no case to be stated when justices, 13.

DELIVERY,

- power of justices to amend case after, 80.

INDEX.

DECLINING OF JURISDICTION

by magistrate, test as to what constitutes, 18.

DELAY

in stating case may be ground for *certiorari*, 48.

DETERMINATION,

hearing and, meaning of, 12.

DISAGREEMENT

as to facts on case stated, 68.

DISCRETION,

magisterial, 9.

of High Court, 54.

DISTRESS WARRANT,

case may be stated on application for, 6.

DIVISIONAL COURT,

appeal to be heard by, 87.

application for rule to state case made to, 55.

composition of, 91.

proceedings subsequent to judgment of, 95.

E.

ESTREATING RECOGNIZANCE, 58.

EVIDENCE,

fresh, 21, 22.

improper reception of, 47.

F.

FACT AND LAW,

difficulty in distinguishing between, 107, 109.

FACTS,

dispute as to, before court of summary jurisdiction, 68.

justices cannot state case on question of, 107—109.

decide what are the, 68.

two classes of, 113.

FEES

to be paid to clerk to justices, 140.

FINDINGS OF FACT,

must be some evidence to support, 114.

INDEX.

FILED,

case must be, 88.

FRIVOLOUS APPEALS, 52.

FORMS AND PRECEDENTS, 149.

affidavit in support of rule to justices to state case, 153.

form of case, 151.

notice of appeal, 153.

to justices to state case, 149.

recognizance for special case, 150.

restatement of special case, 152.

FRESH EVIDENCE, 21, 22.

G.

GENERAL DISTRICT RATE,

case may be stated on a question of law arising under, 6.

H.

HEALTH ACT, PUBLIC,

ordering destruction of unsound fruit, 9.

HEARING,

date of, 89.

HEARING AND DETERMINATION,

broad rule as to, 16.

meaning of, 12.

no appeal lies by special case unless there has been, 19.

none when justices decline to hear case, 13.

HIGH COURT,

discretion of, in granting rule, 54.

proceedings in, 86.

transmission of case to, 78.

INDEX.

I.

INTERESTED JUSTICES, 31.

INTERPRETATION ACT, 1889...5.

INTERPRETATION OF STATUTES,
question of law, 118.

J.

JUDGE IN CHAMBERS

may grant rule to state case, 55.

JUDGMENT OF DIVISIONAL COURT,
proceedings subsequent to, 95.

JUDGMENT OF PETTY SESSIONS,
decision final on a matter of fact, 109.

See CASE STATED.

interested justices, 13.

JUDICIAL OR MINISTERIAL PROCEEDINGS,
test as to, 9.

JURISDICTION,

excess of, gives right of appeal by case, 20.

JUSTICES,

application to, to state case must be in writing, 37.

cannot be heard upon argument of case stated by, 90.

aliter in exceptional cases, 90.

cannot state case on question of fact, 44, 109.

when they decline to hear, 13.

can do so when information dismissed,

case restated by, 80.

16.

decide what are the facts in the case, 68.

King's Bench Division may by rule order case to be stated
by, 20, 43.

licensing, cannot state case, 9.

*may be compelled to state case, 20, 43.

refuse when application for case frivolous, 43, 52.

INDEX.

JUSTICES—*continued*.

- no power to state case under Lunacy Act, 9.
 - or Summary Jurisdiction (Married Women) Act, 9.
- not liable for costs, 137.
- oral application to, to state case, 38.
- points of law not raised before, 21.
- power to amend case after its delivery, 80.
 - state case, 1.
- remitting case to, 93.
- service of notice of application for case on, 37.
 - all must be served, 38.
- service of notice upon clerk to, 37.
- their acts, judicial or ministerial, 6, 9.
- to include stipendiary magistrates, 4 n.
- when equally divided, 15.
 - may be heard in High Court, 90.

L.

LAW, -

- and fact, 107 *et seq.*
- burden of proof, on whom lies question of, 120.
- erroneous decision in, gives right of appeal by case, 20.
- interpretation of statutes, question of, 118.
- Lunacy Act, 9.
- point of, should be raised before justices, 21.
 - aliter*, when facts admitted, 22.
- when point of, raised, justices must state case, 45.

M.

MANDAMUS, 29.

- when application for, refused, 50.
 - High Court has jurisdiction to grant, 19.
 - lies, 18.

MARRIED WOMEN,

- Summary Jurisdiction Act—
 - justices cannot state case under, 9.
 - power to enter into recognizances, 65.

MINISTERIAL ACTS OF JUSTICES, 8, 9.

INDEX.

N.

NON-APPEARANCE OF RESPONDENT, 93.

NOTICE OF APPEAL,

form of, 153.

in writing, 37, 38.

personal service of, 83—85.

service of notice of application for case on clerk to justices,
37.

justices, 37, 38.

Sunday counts as one day, 41, 42.

time expiring on Sunday, 42.

prescribed by statute to be adhered to, 41.

when, is to be given, 76.

O.

OBJECTION,

preliminary, 93.

ORDER OF HIGH COURT,

enforcing of, 16.

oral application for case, 38.

OTHER PARTY,

meaning of, 65.

P.

PAPER BOOKS, 89.

PARTIES TO APPEAL,

death of one of, 93.

PARTY AGGRIEVED,

who is, 10.

PERSONAL SERVICE

of notice of appeal, 83.

exceptions to rule, 85.

INDEX.

POINTS OF LAW

not raised before justices, 21—23.

point reserved from quarter sessions, 25.

POOR AND LOCAL RATE,

case may be stated on question of law arising upon the validity of, 7.

POWER TO STATE CASE, 1.

PRECEDENTS. *See* FORMS.

PRELIMINARY OBJECTION,

when it ought to be raised, 93.

PREPARING CASE,

appellant entitled to costs of, if appeal allowed, 134.

PROCEEDINGS

before magistrates, when an appeal lies to High Court from, 10.

in High Court, 86.

rules of, in High Court, 86.

subsequent to judgment of Divisional Court, 95.

PROHIBITION, 29.

PROOF,

burden of, question of law, 120.

PROPER COURSE

when magistrates equally divided, 15.

PUBLIC HEALTH ACT,

ordering destruction of unsound fruit, 9.

R.

RATES,

when case can be stated as to, 7.

REASONING,

faulty process of, by justice, 116.

RECOGNIZANCES, 57.

amount of, to be fixed by court of summary jurisdiction, 62.

by a married woman, 65.

an infant, 65.

corporations, 64, 65.

INDEX.

RECOGNIZANCES—*continued*.

- enforcing, 58.
- estreating, 58.
- form of, 150.
- must be entered into by appellant before case delivered, 39.
- need not be entered into simultaneously with application for case, 61.
- when appellant in custody, 64.
 - may be entered into, 61.
 - by corporation, 64, 65.
 - infant, 65.
 - married women, 65.

REFUSAL TO STATE CASE,

- certificate of, 52.
- if point of law case cannot be refused, 45.
- when justices refuse, King's Bench may by rule order case to be stated, 43.

REHEARING,

- case may be remitted to magistrate for, 97.

REMEDY,

- when court of summary jurisdiction declines to hear information, etc., 15.

REMITTING CASE TO JUSTICES, 93.

RESPONDENT,

- costs when, does not appear, 134.
- death of, 93.
- may not waive irregularity, 75.
- personal service on, 83—85.
- service of notice of appeal on solicitor of, 84.
- when, does not appear, 93.
- who is, 65.

REMITTING

- of case to magistrates for amendment, 93.
 - rehearing, 97.

REVIEW OF JUSTICES DECISIONS ACT, 56, 90.

- when justices refuse to state, may on motion for a rule *nisi* file affidavit, 90.

INDEX.

RIGHT

of appeal—

extension of, under Summary Jurisdiction Act, 1879...17.

under the Summary Jurisdiction Act, 1857, limited, 3.

to begin, 92.

RULE TO STATE CASE,

High Court may grant, 43.

how obtained, 54.

when Judge in Chambers may grant, 55.

RULES,

Crown Office, 86.

for stating case must be rigidly adhered to, 40, 61.

S.

SERVICE. *And see* NOTICE OF APPEAL.

of notice of appeal and case, on respondents' solicitor, 84.

personal, 83.

exceptions to rule for personal service, 85.

application for case on clerk, 37, 50.

justices, 37, 38.

SEVEN DAYS,

application for case to be made in, 37.

SPECIAL CASE,

And see CASE STATED.

amendment of, 67.

application for, to be made in seven days, 37.

served on each of the justices, and copy

left with clerk, 37, 38.

application to strike out, 76.

certificate of refusal of, 43, 52.

certiorari no longer necessary, 34.

conditions precedent to right of appeal by, 35.

costs of, 130.

delay in stating, may be ground for *certiorari*, 48.

delivery of, to appellant, 72.

dispute as to facts in, 68.

effect of death of a party, 93.

non-compliance with requirements of statutes, 40, 41.

either party may appeal by, 12.

INDEX.

SPECIAL CASE—*continued*.

- every point of law should be inserted in, 66.
- form of, 65, 151.
- judge in chambers may order, to be stated, 55.
- magistrates must grant, or give certificate of refusal of, 43, 52.
- may be remitted to magistrate for amendment, 93, 59.
 - not be amended by consent, 72.
- must be filed, 88.
 - stated within three months, 59.
- necessary steps to bring before High Court, 35.
- power of justices to amend after delivery of, 80.
- proceedings after judgment, 95.
- service and transmission of, 73.
- transmission of, meaning of, 83.
 - to the High Court, 78.
- what it should contain, 66.
- when application should be made for amendment of, 71.
 - magistrates refuse, *mandamus* may lie, 43.
- who draws, 65.

STATUTES.

- giving right of appeal, 2.
- interpretation of question of law, 118.

STATING CASE

- after notice of appeal to Quarter Sessions, 24.
 - on improper reception of evidence, 47.
 - validity of rates, 6—8.

STIPENDIARY MAGISTRATES

- may state case, 4 n.

SUMMARY JURISDICTION,

- Acts 1857 and 1879 practically one, 35.
- Court of, to fix amount and recognizances, 62.
 - what is, 3.
- definition of, by House of Lords, 5.
 - Interpretation Act, 4.

SUMMARY JURISDICTION ACTS,

- rigid adherence to rules in, necessary, 40, 61.

INDEX.

SUNDAY, 41, 73.

counts as one day, 41.

notice received by post on, dates from Monday, 85.

time expiring on, 42, 73.

SUPREME COURT OF JUDICATURE ACTS, 87, 91, 98, 105.

SUPERIOR COURT

may make rules, 87.

T.

THREE MONTHS,

special case must be stated in, 39, 59.

TIME,

a condition precedent to right to have appeal heard, 49.

expiring on Sunday, 42, 73.

mode of reckoning, 41.

when recognizance may be entered into, 61.

within what, case must be stated, 59.

TRANSMISSION OF CASE, 73.

meaning of, 78, 83.

TWO APPEALS

at same time, 1, 29.

V.

VERBAL NOTICE

of application for case, 38.

W.

WHO MAY APPLY FOR A CASE, 3.



Recat B
2-84

LONDON :

PRINTED BY BUTTERWORTH & Co., CRANE COURT, E.C.





BUTTERWORTH & CO.'S STUDENTS' WORKS.

Written by Readers to the Council of Legal Education, by the Law Tutor
to the Incorporated Law Society, and others.

THE "HORNBOOK" SERIES.

A Series of Text-books for Law Students.

1. **Trusts.**—UNDERHILL'S Law of Trusts and Trustees. *Fifth Edition.* Price 17s. 6d. ; for Cash, post free, 14s. 6d. 1901.
" . . . to students, indispensable."—*Law Times.*
2. **Torts.**—UNDERHILL'S Law of Torts. *Seventh Edition.* Price 10s. 6d. ; for Cash, post free, 8s. 10d. 1900.
"Invaluable to the student."—*Justice of the Peace.*
3. **Conveyancing.**—STRAHAN'S Introduction to Conveyancing. Price 10s. 6d. ; for Cash, post free, 8s. 10d. 1900.
"We cordially commend it to students."—*Solicitors' Journal.*
4. **Executors and Administrators.**—ROBBINS & MAW'S Executors and Administrators. *Third Edition.* Price 15s. ; for Cash, post free, 12s. 5d. 1901.
"I cannot do better than urge industrious students to peruse the book."
—Mr. John Indermaur in *Law Students' Journal.*
5. **Vendors and Purchasers.**—SEABORNE'S Vendors and Purchasers. *Fifth Edition.* Price 10s. 6d. ; for Cash, post free, 8s. 10d. 1901.
"Of great use to students."—*Law Students' Journal.*
6. **Evidence.**—POWELL on Evidence. *Seventh Edition.* Price £1 ; for Cash, post free, 16s. 5d. 1899.
"Clearly and concisely sets out and illustrates both the principles and the practice of legal evidence."—*Solicitors' Gazette.*
7. **Legal History.**—CARTER'S English Legal History. Price 10s. 6d. ; for Cash, post free, 8s. 10d. 1899.
"We have no hesitation in recommending this work to the student as the best work at his disposal."—*Law Students' Journal.*
8. **Conveyancing Precedents.**—KELLY'S Conveyancing Draftsman. *Fourth Edition.* Price 15s. ; for Cash, post free, 12s. 5d. 1900.
"Precisely the book we would put into the hands of students."
—*Irish Law Journal.*
9. **Libel and Slander.**—FRASER'S Law of Libel and Slander. Principles and Practice. *Third Edition.* Price 12s. 6d. ; for Cash, post free, 10s. 5d. 1901.
"A good piece of work."—*Law Journal.*
10. **Partnership.**—UNDERHILL'S Law of Partnership. Price 3s. 6d. net ; postage 3d. 1899.
11. **Wills.**—UNDERHILL & STRAHAN on Wills and Settlements. Price 12s. 6d. ; for Cash, post free, 10s. 5d. 1900.
"An excellent book for students."—*Canada Law Journal.*
12. **Mercantile Law.**—STEVENS' Elements of Mercantile Law. *Third Edition.* Price 10s. 6d. ; for Cash, post free, 8s. 10d. 1900.
"As an introduction to Mercantile Law, Dr. Stevens has no rival."
—*Justice of the Peace.*
13. **Contracts.**—PLUMPTRE on Contracts. *Second Edition.* Price 7s. 6d. ; for Cash, post free 6s. 3d. 1897.
"Invaluable to the student."—*Solicitors' Journal.*
14. **Roman Law.**—WILLIS' Roman Law Examination Guide. Price 6s. ; for Cash, post free, 5s. 3d. 1897.

RECENT LAW WORKS.

Stephen's New Commentaries. 13th Edit 1899.

Mr. Serjeant Stephen's New Commentaries on the Laws of England, partly founded on Blackstone. By His Honour JUDGE STEPHEN. *Thirteenth Edition*, thoroughly Revised and Modernised, and brought down to the present time. By ARCHIBALD BROWN, B.C.L., Barrister-at-Law. 4 vols. handsomely bound, gilt lettered. Demy 8vo. Price £4 4s.; for Cash, £3 7s. 6d. 1899.

*** The Work selected for the Intermediate Examinations for Solicitors.

Fawcett's Law of Landlord and Tenant.

By W. M. FAWCETT, Esq., of Lincoln's Inn, Barrister-at-Law. *Second Edition*. By JOHN M. LIGHTWOOD, Esq., of Lincoln's Inn, Barrister-at-Law. Price £1 1s.; for Cash, post free, 17s. 5d. 1900.

"This edition aims at giving the practical view of the position of landlord and tenant in as short a compass as is consistent with accuracy and reliable information."—*Law Times*.

The Law of Executors and Administrators.

Being ROBBINS and MAW's Devolution of Real Estate and Administration of Assets, Real and Personal. *Third Edition*. By the late L. G. G. ROBBINS, Esq., of Lincoln's Inn, Barrister-at-Law, Reader in Equity to the Inns of Court; and F. T. MAW, Esq., Barrister-at-Law. Price 15s.; for Cash, post free, 12s. 5d. 1901.

"Some of the chapters are excellent, notably that on 'Assent to Devises.'" —*Law Notes*.

SENT GRATIS on application, a copy of

Butterworth & Co.'s Complete Catalogue of English Law Works, together with a Complete Chronological List of all the English Reports, with period covered, etc., with an Alphabetical Table of Abbreviations used in the various Reports and Text Books.

BUTTERWORTH & Co. will be glad to give Estimates for supplying Sets, or portions of Sets, of any Reports that Members of the Legal Profession may require. Being the Publishers of some of the old and valuable Reports, B. & Co. solicit Orders direct, good and perfect Copies being guaranteed.

ALL LAW REPORTS SUPPLIED.

Catalogue and Lists Gratis on Application.

BUTTERWORTH & Co.,

Law Publishers, Booksellers, Exporters,
12, BELL YARD, TEMPLE BAR, LONDON, W.C.

Telegraphic Address—"BUTTERWORT, LONDON."

